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MINI—DISSERTATION

A critical analysis of the Angolan Occupational Health and Safety (OHS) law and the protection it offers to employees of the oil and gas industry.

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DEDICATION

To my beloved parents,
Jaime Domingos and Suzana Henda Latino
Without you I am nothing.

ABSTRACT

This study is specifically concerned with the effect of occupational health and safety (hereafter OHS) law in Angola and the protection it offers to employees in the oil and gas industry.

The current Angolan OHS legislation continues to be characterised by the pre-independence legal system inherited from the colonial era, which creates a crisis of legitimacy and justice. This crisis may be resolved through the ratification of the International Labour Organisation OHS conventions.

This dissertation examines workplace health and safety in Angola from a legal perspective in detail, and explores international instruments that are used to protect employees from unhealthy and unsafe conditions. An analysis of the relevant source materials reveals a disjunction between the international standards and the laws as implemented in Angola.

It is a fact that the law is expected to offer as far as is possible reasonable health and safety protection to employees. Evidence demonstrates, however, that these laws have largely failed to meet expectations. The problem is not only the fragmentation and inconsistency of the OHS laws, but also that the framework is in need of revision and a dedicated plan to resolve the gaps in the existing legislation.

The study thus explores the discontinuities and deficiencies of the regulatory framework as well as of the enforcement mechanisms. Similarly, it proposes an extensive shift of emphasis away from the current legal debate to focus on the relevant issues that will offer substantive protection to the health and safety of employees, as well as justice in law reform.

Various steps need to be taken to ratify the OHS conventions in order to improve the deficient framework of OHS legislation in Angola.

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CHAPTER ONE: INTRODUCTION

Kofi Annan has indicated that:

Safety and health of workers is a part and parcel of human security. As the lead United Nations agency for the protection of workers' rights, the ILO has been at the forefront of advocacy and activism in promoting safety and health at work. Safe work is not only a sound economic policy; it is a basic human and labour right.¹

Similarly, Juan Somavia has stated that:

Current estimates point to some 2 million men and women who lose their lives through occupational accidents and work-related diseases each year.... Work is central to people's lives, to the stability of families and societies. It is a key to poverty reduction and to the achievement of social inclusion and social cohesion. Such work must be of acceptable quality. Decent Work must be Safe Work and we are a long way from achieving that goal.²

These speeches were delivered in 2002 during the occasion of Workers' Memorial Day. This event has been an opportunity to highlight the preventable nature of workplace accidents and ill health, as well as to promote campaigns for an improvement in workplace safety.³

As demonstrated in the quotations given above, the study understands that the need for health and safety is an essentially human concern. Every individual, whether employed or not, both at the workplace and outside it, has the intrinsic need to be healthy and safe.

This dissertation thus aims to analyse Angolan's OHS legislation and the protection it offers to employees of the oil and gas industry. It will, furthermore, enable the reader to understand the intention of the current general OHS legislation *status quo* and its shortcomings against international benchmarks.

The study understands OHS to be an area of labour law that shows concerns for the health, safety and welfare of individuals involved in the workplace.⁴ It is also informed by Fanning's view that OHS regulations are procedures applicable in order to protect any person who may face risk in their work environment.⁵

¹ Speech delivered by Kofi Annan — former General Secretary of the United Nations in New York on the occasion of Workers' Memorial Day, 28 April 2002.

² Speech delivered by Juan Somavia — Director General of the International Labour Office during the occasion of Workers' Memorial Day New York and Geneva respectively, 28 April 2002.

³ Workers' Memorial Day, takes place every year on the 28 April 2002. The occasion serves to remember and take action for workers killed, disabled and injured or made unwell by their work. See information at <http://www.ibram.org.br/sites/700/784/00001030.pdf> accessed on 4/08/2014.

⁴ Schorne Darlow & Johan Louw, *Explaining the Occupational Health and Safety Act* (2013) available at <http://www.mylexisnexis.co.za/Index.aspx> accessed on 12/07/2014.

⁵ Fanning FE, *Basic safety administration: A handbook for the new safety specialist* (2003) 24.

OHS laws are also perceived to be consistent codes of rules that can be applicable to all industries; its scope covers rules that attempt to prevent injuries or psychological harm to employees as confirmed by Fanning.⁶ This law generally covers codes of responsibilities of employers and employees towards the management of OHS in the workplace.⁷ The laws generally must include legislated condition that obliges employers to provide specific workplace materials for health and safety protection.⁸

South Africa's OHS Act of 1993 demonstrates that OHS law covers a variety of rules applicable in the workplace, its aim being to protect the health and safety of the workforce. These rules include definitions, the establishment of an advisory council for occupational health and safety, the functions of the council and its constitution, a health and safety policy, the general duties of employers to their employees, the prohibition of victimisation, the designation and functions of a chief inspector, the designation of inspectors by the relevant minister, the functions of inspectors, the special powers of inspectors, investigations, and formal inquiries.⁹

Although there are in Angola many general policies and statutes, specific industries are expected to apply policies relevant to that particular industry, an example of this Decree No. 38/09 of 14 August 2009 which specifically regulates the petroleum industry in its entirety.

The study gives special attention to the legislation and practice of OHS in Angola's oil and gas industry. It also gives an in-depth analysis of OHS law in general, the scope of which covers the entire economic sector.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ The South Africa Occupational Health and Safety Act No. 85 of 1993.

1.1. Legal issues

Health and safety regulation is an important part of any industry, especially in the oil and gas sector which is classified as a major hazards industry.¹⁰ Recent events have demonstrated problems related to a broken culture of health and safety in the workplace. This study will critically examine whether regulations effectively target and alleviate problems related to health and safety in the workplace. Does the legal OHS framework of Angola comply with international standards and deliberately regulate health and safety in the workplace? The fact that workplace fatalities have persisted and even increased over the past years, suggests that improvements need to be made in the area of health and safety. This study will provide guidance on how such improvements can be made.

1.2. Methodology and limitations

The research is entirely library-based. It analyses the existing Angolan legislation on the sector and reports issued, as well as data in the industry that has already been collected and disseminated by other researchers. The research is complemented by an analysis of a comparable literature of OHS regulations generally and associated areas published elsewhere, such as by the International Labour Organisation (ILO).

Due to financial constraints there is a lack of *in loco* data collection. This precludes a quantitative analysis of the industry as a whole, thus resulting in an outcome that may be slightly skewed. Despite this, thanks to the qualitative research presented here, the study gives a clear picture of the OHS legislation in the industry and, in fact, in the entirety of Angola's economic sector.

1.3. Importance of this study

The results obtained from this investigation may be useful in improving the regulatory framework of Angola's OHS legislation. It will provide legal knowledge which oil and gas companies could use as a reference to improve their health and safety practices. The study may also identify some new issues related to health and safety law and practices which could lead to future research. It intends also to raise awareness amongst legal practitioners and the public at large about the deficient implementation of health and safety standards in companies operating in the country, especially in the oil industry.

¹⁰ World Bank, *Angola: Oil broad-based growth and equity: World Bank Country Study* (2007).

1.4. Structure of the research

This study consists of five chapters. Chapter One introduces the topic and elucidates the main purpose of the dissertation, its methodology and limitation. Legal issues are raised and the importance of the study is suggested. The general objective of this chapter is to give a full account of what one needs to know to appreciate the issues at stake. Chapter Two analyses Angola's occupational health and safety legislation. The objective of this analysis is to examine whether OHS regulations effectively target and alleviate problems related to health and safety in the workplace. Chapter Three explores the international standards that are used to protect employees from unhealthy and unsafe conditions. The rationale of this chapter is merely to review relevant theories and the most recent published information on the issues at stake, and to determine the disjunction between the international standards and the legislation as implemented in Angola. Chapter Four explores the current state of the Angola's legislation relevant to OHS. It evaluates the state of Decree No. 31 of 5 August 1994, the legislation enacted to monitor generally the OHS rules in the entirety of the economic sector. This decree will be measured against the Conventions No. 155. The objective of this evaluation is to identify gaps in Angolan legislation that might need to be supplemented. Chapter Five concludes the dissertation and offers recommendations.

It is important to acknowledge that the legislation covering OHS is enacted *inter alia* to foster healthy and safe work environment.¹¹ Measured against this standard, the common occurrence of workplace fatalities across a number of economic activities in Angola confirms, that the country's Government and its major companies have not made much progress in fostering a healthy and safe environment for the entirety of the economic sector. Examples of lack of progress can be clearly seen in the oil and gas industry.

Since the discovery of oil and gas and the development of its industry in Angola, the primary emphasis has been on promised employment benefits. Health and safety issues are rarely considered, even from a regulatory perspective.

¹¹ Ibid.

The lack of health and safety enforcement mechanisms in the oil and gas industry of Angola resulted in 1103 fatal occupational incidents from 2008 to 2012.¹² There were also 501 deaths as a result of work-related diseases caused by toxic substances, and an estimation of 722 employees' deaths due to their exposure to dangerous substances in the workplaces.¹³ These figures are based on research conducted by Work and Health in Southern Africa, an international research institution whose purpose is to contribute to poverty reduction by socio-economic development in the Southern Africa Development Community (SADC) region through the improvement of occupational health and safety. The Ministry of Petroleum of Angola confirmed that, in addition, around 400 employees had died in 2013 in major commercial disasters associated with the failure to implement health and safety rules in the most of the oil and gas companies.¹⁴

These examples of workplace incidents in the oil and gas industry disclose a broken culture of safety and an absence of an effective health and safety regulatory system as well as of enforcement mechanisms. To prevent the loss of life of so many employees, it is necessary to ensure that employers have the obligation to implement health and safety standards in the workplace, as was indicated in the South African case *Van Deventer v Workmen's Compensation Commissioner*,¹⁵ in which it was held that public opinion expects that employers have a duty based on common law to take reasonable care of the health and safety of their employees.

1.5. Conclusion

In conclusion, this chapter introduces the topic and describes the methodology used, the legal issues to be addressed, as well as the importance of the study. It is revealed that there is a broken culture of health and safety and a lack of adequate enforcement mechanism, an example of this being clearly seen in the oil and gas industry. These problems are, in fact, preventable through the implementation of comprehensive OHS legislation as well as the adequate enforcement mechanism of regulations. It is also necessary to establish strict mechanisms of inspection and reporting processes aimed at curtailing occupational incidents.

¹² Work and Health in Southern Africa (WAHSA), *Work and health in Southern Africa: Findings and outputs of the WAHSA programme* (2008) 16.

¹³ Ibid.

¹⁴ Angola. Ministry of Petroleum, *Total annual report on occupational incidents* (2013) 15.

¹⁵ *Van Deventer v Workmen's Compensation Commissioner* 1962 (4) SA 28 (T) para 31.

CHAPTER TWO: ANALYSIS OF THE OCCUPATIONAL HEALTH AND SAFETY LEGISLATIONS OF ANGOLA

The second chapter discusses the framework of OHS law of Angola. Its objective is to examine whether OHS regulations effectively target and alleviate problems related to health and safety in the workplace.

The labour laws of Angola including the OHS regulations are shaped by the colonial legal regime, which creates crisis of legitimacy and justice in the legal regime. This is confirmed by Fenwick, Kalula and Landau, who have studied the context of labour laws of the Southern Africa Development Communities countries. They commented that 'the post-colonial states in southern Africa retained the labour law systems imposed during the colonial period'.¹⁶

During the pre-independence era colonial officials used labour laws to organise and control the indigenous labour force.¹⁷ These laws, however, were inadequate as they addressed only a few aspects capable of protecting employees in workplaces. Although there were labour laws which regulated the activities in the workplaces, most of them were racially discriminatory and were especially applicable to African employees.¹⁸ In Angola, civil wars have largely delayed the development of labour laws in various domains and this has resulted in, for example, a poor regulatory framework of OHS, as was stated: 'in Angola, Mozambique and the DRC [Democratic Republic of Congo], civil wars have resulted in resources being channelled to state defence rather than to development'.¹⁹

From the late 1960s onwards, as published resources have indicated, there was an increased recognition of the importance of OHS regulations among policy makers, trades unions and academics.²⁰ Such recognition enabled the OHS laws to undergo a number of fundamental changes and adaptations to suit various industrial sectors.

The study understands that today's concern for health and safety regulations in Angola originates from the 1960s, when trade unions turned their attention to

¹⁶ Fenwick C, Kalula E & Landu I 'Labour law a southern African perspective' in Tzchanesh Tekle (ed), *Labour law and worker protection in developing countries* 1st ed (2010) 177 – 179.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid 180.

²⁰ Bohle P & Quinlan M, *Managing occupational health and safety: A multi-disciplinary approach* 2nd Ed (2000) 107 & 108.

problems related to the quality of working life, job security, job satisfaction and occupational health and safety protective measures.²¹

Hughes and Hughes show that in a developing country, Angola being one such example, the regulation of OHS law is currently ineffective.²² This is due to many reasons, the most noticeable being a lack of an enforcement mechanism in the law, substantive gaps in comparison with the standards provided by the ILO, and a lack of monetary resources, all of these being reasons that prevent the implementation of and full compliance with OHS laws and regulations in the industrial sector.

Although there are critics of aspects regarding health and safety regulations in developing countries like Angola, Lingard and Stephen have confirmed that over the past 20 years OHS laws have assumed a significant role for governments, employers, unions, professionals and employees in many countries.²³

As with many other developing countries, the government of Angola has enacted regulations, commonly known as Presidential Decrees as well as Ministerial Decrees (the equivalent of statutes and regulations respectively in South African law) in order to regulate all aspects of OHS nationally. The decrees are directives from the head of government or cabinet of ministers. They carry the full force of law and are the key legal instruments used to enforce justice in the area of OHS. The preamble of Decree No. 31/94 of 5 August 1994 recognises the importance of health and safety in the workplace. It also indicates that 'in any society Safety, Hygiene and Health at Work are one of the bases for the total development of the ability of workers to ensure the safety and health conditions while fulfilling their tasks'.²⁴

2.1. The framework of the occupational health and safety legislation of Angola

The enforcement of the OHS regulations in the oil and gas industry is mandated by the national government and monitored by the Ministry of Petroleum under Decree No. 38/09 of 14 August 2009. This establishes the New Safety Regulations for the Petroleum Industry. This law is accompanied by a number of other labour law related

²¹ Hermanus MA, *Trends in occupational health and safety policy and regulation: Issues and challenges for South Africa* (1999) 5.

²² Hughes P & Hughes L, *Easy guide to health and safety* 1st Ed (2008) 20.

²³ Lingard HC & Stephen MR, *Occupational health and safety in construction project management* 1st Ed (2004) 258.

²⁴ The Preamble of Decree No. 31 of 5 August 1994.

instruments and tools which contribute to the implementation of OHS at the national level. These are:²⁵

- a) Decree No. 31/94 of 5 August 1994. This Decree is commonly recognised as the general legislation established for the national occupational safety, hygiene and health policy;
- b) Executive Decree No. 6/96 of 2 February 1996, which approves the general regulations concerning occupational safety and health services in the enterprises;
- c) Lastly, Executive Decree No. 21/98 of 30 April 1998 as well as Executive Decree No. 128/98 of 23 November 1998 of the Ministry of Public Administration, Labour and Social Security. These legislations approve the general regulations on safety and health and they specifically focused on gesture and indicator signage that serve as a means of communication of OHS in the workplace.

The study, however, focuses specially in Decree No. 38/09 of 14 August 2009 which establishes the New Safety Regulations for the Petroleum Industry and it later gives a special attention to Decree No. 31/94 of 5 August 1994, whose provisions are generally covered by the four labour laws mentioned above. This study also considers Angola's environmental law as well as its labour law.

2.1.1. Decree No. 38/09 of 14 August 2009: New Safety Regulations for the Petroleum Industry

The key legislation governing OHS in the oil and gas sector of Angola is Decree No. 38/09 of 14 August 2009 which establishes the New Safety Regulations for the Petroleum Industry. It was enacted in 2009 and is monitored by the wholly State-owned national company Sociedade Nacional de Combustiveis de Angola (Sonangol), as well as the Ministry of Petroleum. Decree No. 38/09 of 14 August

²⁵ The legislative texts of OHS laws are recognised by the International Labour Organisation and are established in the form of Decrees, namely Decree No. 31/94 of 5 August 1994, Executive Decree No. 6/96 of 2 February 1996, Executive Decree No. 21/98 of 30 April and Executive Decree No. 128/98 of 23 November of the Ministry of Public Administration, Labour and Social Security. This information is also available at http://www.ilo.org/dyn/cisdoc/cisdoc_legosh.view_record?p_mfn=108009&p_ctry=ago&p_lang=E accessed on the 12/06/2014.

2009 is a milestone in the Angolan petroleum legislative framework.²⁶ It sets forth the fundamental principles regulating the health and safety of the oil industry and it covers a wide range of matters relating to health, hygiene and safety at work.

Article 1 of this legislation, describes the domestic sector and the policy for oil and gas, including liquefied natural gas (LNG).²⁷ It defines the scope of its application as well as its limitations.²⁸ Chapter II describes the principle of organisation and execution of petroleum operations. Article 19 establishes the liabilities of employers and it indicates that: 'Petroleum operators have strict liability for environmental damage and are obliged to provide health insurance for employees as well as have an obligation to prevent occupational risks in the workplace'.²⁹

Article 23 establishes the regulations concerning safety and hygiene in the workplace. It states that: 'The petroleum operations shall be carried out in accordance with applicable law and the generally accepted practices in the international oil industry relating to safety, hygiene and health at work'.³⁰ The legislation requires companies³¹ in the oil and gas sector to submit several plans for safety measures to the Ministry of Petroleum.³² According to Prata, who has studied the Angolan oil industry, these plans should include health and safety measures, pursuant to Decree No. 38/09 of 14 August 2009.³³ They are named as follows:³⁴

- a) An annual working plan: this is a plan that outlines the health and safety target to be achieved each financial year.

²⁶ The framework of oil and gas laws includes the Petroleum Activities Law of 2004 (PAL) and the Law on Taxation of Petroleum Activities of 2004 (PTL). The broader regulation governing OHS are, however, wholly found in the New Safety Regulations for Petroleum Industry.

²⁷ The New Safety Regulations for the Petroleum Industry Article 1, the article clarifies that this law seeks to establish the rules of access to and the exercise of petroleum operations in the available areas of the surface and subsurface areas of the Angolan national territory, inland waters, territorial waters, exclusive economic zone and the continental shelf.

²⁸ Ibid article 2.

²⁹ Ibid article 19.

³⁰ Ibid article 23 (1).

³¹ International oil companies, including BP, Chevron, ENI, ExxonMobil, Petrobras, Statoil and Total Ltd.

³² Article 23(2).

³³ Beside the law regulating health and safety, these plans must also include provisions inherent in Decree No. 39/00 10 October 2000 (the Environment Decree).

³⁴ Prata, Helena 'Getting the deal through oil regulation in 26 jurisdictions worldwide' (2013)12 available at http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2013/GR2013_Angola.pdf accessed on 05/07/2014. The review of this paragraph is made in accordance with the analyses conducted by Prata on Decree No. 38/09 of 14 August 2009 of Angola.

- b) An annual production plan: here the maintenance procedures are outlined, as are methods to ensure that facilities have safe and acceptable technical conditions for production.
- c) A plan that evaluates the environmental impact: this plan gives information about the identification of potential environmental damage that may be caused by the actions of companies or by the facilities applied during operations. It shall include measures to mitigate any effects of these.

Decree No. 38/09 of 14 August 2009 enacts responsibilities of both employers and employees as regards the management system of health, hygiene and safety at work; the responsibility to ensure for safety on installations and equipment operation; and, lastly, it establishes reasonable sanctions in cases of any violation.³⁵

It assigns a number of obligations to employers, including the duty to educate and train their staff on health and safety practices, the duty to conduct risk analyses, and the duty to establish emergency plans in the workplace which may include health and safety procedures.³⁶ The law establishes the duty to file health and safety accidents, report procedures and to take actions to comply with this law.³⁷

Decree No. 38/09 of 14 August 2009 requires companies of the oil sector to have maintenance plans to ensure that the facilities used in the workplace are in a safe and acceptable technical condition.³⁸

As regards the health and safety of employees, Decree No. 38/09 of 14 August 2009 requires, *inter alia*, that companies in the oil sector must ensure that all employees are protected against noise, vibrations, radiation and exposure to chemical products and, simultaneously, to provide medical assistance in case of illness caused in the workplace.³⁹ The companies must also provide protective facilities for each employee before they resume their tasks.⁴⁰ Employers should establish a safety control and management programme and ensure that the procedures of safety, health and hygiene are recorded and the record is archived.⁴¹

³⁵ Decree No. 38/09 of 14 August 2009 Chapter I.

³⁶ Ibid article 24 (a, b, c & d).

³⁷ Ibid article 25. The same information was provided by Miranda Correia Amendoeira & Associates, advocates of the Legal Association Bar of Angola available at <http://www.mirandalawfirm.com/uploadedfiles/47/19/0001947.pdf> accessed on 20/03/2014.

³⁸ Ibid article 24.

³⁹ Ibid article 26.

⁴⁰ Ibid Chapter V.

⁴¹ Article 26 (b).

Decree No. 38/09 of 14 August 2009 authorises the Ministry of Petroleum to ensure the compliance of the law and imposing penalties by way of monetary fines in cases of any non-compliance.⁴² It is likely that the general outline of this legislation requires amendment and updating. The oil industry, which is constantly being developed, has called for a review of it, in order to enrich and improve its content.

According to Yeboah, the production and commercial activities that follow this prolific industry, contains considerable health and safety risks that negatively affect the workforce and neighbouring communities and also has a potential adverse impact on the environment.⁴³ *BBC News*, for example, revealed that around the year 2011 it was reported that the Angolan Government had fined the United States oil company, Chevron Texaco, the sum of 2 million US\$ for causing environmental damage with oil spills that were potentially damaging to both human life and the environment.⁴⁴

The industry activities, which are monitored by the executive, non-governmental organisations (NGOs) and the legislature, have not been spared their share of disastrous incidents that have often resulted in serious injuries, multiple fatalities, property damage as well as business disruption.⁴⁵ This is often indicative of an employer's lack of responsibility in respect of the management of health and safety in the workplace and is evidence of a lack of supervision, as well as the necessary mechanism to enforce compliance with the rules contained in Decree No. 38/09 of 14 August 2009.

The fact is that the Constitution enacts codes, as disseminated in Decree No. 31 of 5 August 1994, that protect the right to health and safety of every employee in the workplace.⁴⁶ This constitutional enactment confirms that there is no rate of accidents in the workplace that can be considered as acceptable, furthermore, it must

⁴² Ibid article 27. This section establishes the mechanism for inspection. It also authorises the Ministry of Petroleum to inspect factors that impact the health and safety conditions of the environment adversely as well as of employees.

⁴³ Yeboah K, *An assessment of the occupational health and safety challenges of offshore oil production* (2009) 2.

⁴⁴ *BBC News*: July 1, 2011 'Business | Angola fines Chevron for Pollution'. Available at <http://news.bbc.co.uk/2/hi/business/2077836.stm> accessed on the 20/05/2014.

⁴⁵ World Bank, *Angola oil broad-based growth and equity: World Bank country study* (2007).

⁴⁶ The Constitution of Angola article 76 (2).

be understood that every time an employee goes to work he or she must return home safe and healthy.⁴⁷

The present study admits that accidents inevitably happen in almost all industrial activities but it iterates that the risk factors are even higher in the offshore oil and gas operations: that is why they merit special attention. It is critical to note, however, that due to the high toxins contained in crude oil, the provisions in Decree No. 38/09 of 14 August 2009 which regulate OHS in the industry are insufficient, first, because the Decree does not provide rules regulating exposure to chemical substances, or contain special policies that address issues related to toxic substances at work, this affirmation was confirmed by the World Bank, as quote:

There is no specific legislation in force in Angola concerning pollution and hazardous standards, nor any environmental legislation concerning the use, treatment, storage and management of chemical substances in Angola. Nevertheless, the pollution prevention program of oil companies is in line with the environmental principle of prevention and therefore in conformity with the general rules applicable in Angola.⁴⁸

Secondly, all incidents and injuries, as well as the fragility of Decree No. 38/09 of 14 August 2009 as described in this study, act as an emergency call to the government to enact adequate OHS legislation, laws which can successfully protect employees' rights to health and safety in the workplace. This opinion replicates the view presented by the World Bank when it reported on the legal practice of Angola, namely that 'the Government of Angola states general concern with health and safety issues in the work environment, but is still contemplating and discussing a specific law on that matter'.⁴⁹

Finally, it is important to enact regulations that can solve the current problems related to health and safety in the oil and gas industry. These include, among others, insufficient rules that regulate toxic chemicals at work, the lack of adequate inspection, as well as mechanisms to enforce the compliance with any relevant legislation.

⁴⁷ It is evident that for this to take place, employers in cooperation with employees, must take significant steps to adhere to the rules established in the law in order to safeguard the health and safety of everyone at work.

⁴⁸ World Bank, *Oil and gas industry codes of conduct and Angolan national legislation* (2003) 12 available at http://siteresources.worldbank.org/INT/PSD/Resources/Angola/Angola_CoCandAngolanLegislation.pdf accessed on 22/06/2014.

⁴⁹ Ibid at 11.

To achieve such prevention of exposure to toxic substance, the Angolan authorities should ratify and enforce the ILO's Chemicals Convention No. 170 of 1990, which will be discussed in Chapter Three. An adequate mechanism is also required to enforce the laws and correct the actions of employers that tend to neglect employee's health and safety at work. It needs to be noted, further, that companies operating in the oil and gas industry must include in their code of practice provisions that regulate the environment in order to safeguard the health and safety of their employees. This view is confirmed by the World Bank ... 'oil and gas companies active in Angola generally include the environmental protection principle in their codes of conduct and most of them support a safe and healthy working environment for employees and the public'.⁵⁰ An environmental protective principle in the companies' code of conduct regarding health and safety of employees can sum up the view that the same hazardous conditions that can endanger the environment can also jeopardise employees' health and safety conditions.

2.1.2. The General Environmental Law No. 5/98

The Constitution of Angola states that: 'everyone has the right to live in a healthy and unpolluted environment and the duty to defend [protect] and preserve it'.⁵¹ The General Environmental Law No. 5/98 guarantees the right of everyone in the country to live in a healthy environment, as it specifies: 'all citizens have the right to live in a healthy environment'.⁵² This constitutional provision protects the right of every citizen — those who are recognised by law as citizens of Angola — whether they are employers, employees or ordinary persons. The legislation protects them and it affords them the right to be in a healthy and safe environment. The onus is, however, on the employer to ensure that employees are not exposed to harmful substances from the environment or if they are so exposed, to use protective equipment to safeguard their health and safety.

The law itself does not specify how the employer has to guarantee an employee's right to health and safety, or give details on how employees should refuse dangerous working conditions. Benjamin, however, suggests that these explicit duties could also be part of the contract of employment and, once it is

⁵⁰ Ibid.

⁵¹ The Constitution of the Republic of Angola of 21 January 2010 article 39 (1 & 2).

⁵² The General Environmental Law No. 5/98 Article 3.

breached, the employee could take legal action to enforce his right to a safe working environment.⁵³ A rational and responsible employer is under a duty to include in the contract of employment clauses that inform the employee of potential hazards associated with his/her work and guide and train the employee how to deal with hazardous activities and substances.⁵⁴ It is understood that Decree No. 31/94, the General Environmental Law, and Decree No. 38/09 of 14 August 2009, which establishes the New Safety Regulation for the Petroleum Industry, comprise the domestic legislation that regulates OHS in the oil and gas industry.

Although the General Labour Law applies to the entirety of the market place in Angola, this study restricts the application of its rules, as it seeks to identify specific rules governing OHS in the oil and gas industry.⁵⁵ It is recognised that, in the event of a workplace fatality, accidents, or any conditions that jeopardise the health and safety of an employee, an employer is required to take appropriate measures to safeguard the security and health of its employees while in the workplace.

2.1.3. Regulations of occupational health and safety governed by the labour law

2.1.3.1. Decree No. 31 of 5 August 1994

Decree No. 31 of 5 August 1994 establishes the law that governs the OHS in the workplace. The purpose of this legislation is to establish principles that promote the health, hygiene and safety in the workplace.⁵⁶ It was enacted in accordance with the precepts of paragraph 2 of Article 76 of the Constitution, which indicates that ‘every worker shall have the right to vocational training, fair pay, rest days, holidays, protection, and workplace health and safety, in accordance with the law’.⁵⁷

In this regard, the Constitution of Angola is one of the few that addresses issues related to health and safety. This view is supported by Benvenisti, Nolte and

⁵³ Benjamin P & Greef J, *Report of the committee of inquiry into a national health and safety council* (2003) 50 & 51

⁵⁴ *Media 24 Ltd v Grobler* (2005) 26 ILJ 1007 (SCA) para 65 and 68. This case law is used in order to illustrate constancy of principle made elsewhere.

⁵⁵ The General Labour Law of 11 February 2000 applies to all workers providing services paid on behalf of an employer within the organisation and under its supervision and direction. Chapter V, section 1 establishes the general rules for health, hygiene and safety for the entirety of Angola’s labour market. This law, however, is not discussed in the dissertation whose main purpose is to identify the specific legislation that regulates OHS in the oil and gas industry.

⁵⁶ Decree No. 31 of 5 August 1994 article 1. This article establishes the objective of the law.

⁵⁷ The Constitution of Angola article 76 (2).

Barak-Erez,⁵⁸ who confirmed that the Constitution of Angola is among a few in the world that guarantee the right to health and safety of employees at work.⁵⁹

Other than that, Decree No. 31 of August 1994 applies to every employee and, except in certain circumstances, may not be limited by either the government or by private individuals, including employers, as illustrated by this law: 'this decree applies to workers, state companies, mixed private and cooperative enterprises'.⁶⁰ Section II of the law outlines the definition of key concepts inherent in Decree No. 31/94.⁶¹ It is understood from article 3 of this law, that defining the key concepts enables the identification of the underlined terms, as well as finding comprehensive expressions that best describe the terminology used and encoded in the law. It also gives meanings to concepts that are not known to other readers.

Chapter II describes the obligation of the State.⁶² It assigns to the Ministry of Public Administration, Employment and Social Security — also known as the Ministry of Labour — the obligation and responsibility to administrate the policy on

⁵⁸ Benvenisti E, Nolte G & Barak-Erez D, *The welfare state, globalization, and international law* (2004) 222.

⁵⁹ Additionally, the Constitution guarantees the right to life, human integrity and an environment that is not harmful to the health and well-being of people.

⁶⁰ Decree No. 31 of 1994 article 2.

⁶¹ Ibid article 3 (1). This legislation defines a 'Safety and Health at Work system [as] a set of rules and regulations aimed at improving conditions of work environment, aimed at safeguarding the health and physical integrity of the worker, as well as the conscious application of principles, methods and techniques the organization of work, leading to the reduction of occupational risks; b) safety at work is a set of activities that allow you to study, investigate, design, control and apply the methods and organizational-technical means to ensure safe, hygienic and comfortable conditions at work, but also the legal and regulatory provisions to protect the work; c) safety at work is a set of non-medical methods and techniques designed to preserve life and health of workers against the aggressiveness of environmental agents in the workplace where they perform their duties; d) health at work is not merely the absence of disease or discomfort, but also embraces the physical and mental elements affecting health, being directly related to safety, hygiene and health at work; e) prevention is the set of provisions or measures taken or planned at all the company's stages in order to prevent or reduce occupational risks; f) risk is the combination of probability and severity of acquiring an injury or harm to health according to the cause is the effect, time and circumstances of their occurrence; g) accident at work is the sudden event that occurs through the exercise of work activity for the company and the worker is injured with lesions and personal injury resulting in partial or total, temporary or disability, permanent for work or death; h) occupational disease is the alteration of the defined pathologically health, caused by the professional activity on the workers who work, on a regular basis, exposed to factors that cause diseases and are present in the work environment or in certain professions or occupations; i) fire is the burning uncontrolled reaction that develops in a place and that for its interruption needs an intervention with substance and its own resources, which can cause as a result, loss of property or human lives. 2. The concepts provided in paragraphs g) and h) of this article, do not prejudice the respect for the definitions on the matter, provided in legal diplomas'.

⁶² Ibid article 6.

safety, hygiene and health at work. It also assigns to the Ministry the responsibilities which, among others, include the following:

- To define, develop and guide policy on safety, hygiene, and health and propose to the higher authorities for approval;⁶³
- To monitor the application of the policy established and to monitor the compliance of the laws and regulations concerning safety, hygiene and health at work;⁶⁴
- To assist and advise companies, as well as employees in the process of implementing the policy of safety, hygiene and health in the workplace;⁶⁵
- To encourage employees to purchase health and safety insurance and helping them to improve the habits of hygiene in the workplace;⁶⁶
- To develop mechanisms for investigation and standardization of safety, hygiene and health in the workplace;⁶⁷
- To order the stoppage of work which present imminently dangerous working condition;⁶⁸
- To protect specially the women's professional activity and employees with a reduced work capacity;⁶⁹
- To organise the collection, treatment and dissemination of the statistics regarding matters of safety, hygiene and health in the workplace.⁷⁰

Simultaneously, the law invokes the Ministries of Health, the Interior and Education to help and develop a sustainable culture of OHS practice:

The Ministry of Health has the responsibility to develop measures related to medicine in order to monitor occupational diseases and the rehabilitation of employee's health as well as the responsibility to determine the competent body to implement these measures.⁷¹ The law also allocates responsibility to the Ministry of the Interior to propose and apply the policy for fire and explosives in the workplace;

⁶³ Article 6 (a).

⁶⁴ Ibid (b).

⁶⁵ Ibid (c).

⁶⁶ Ibid (d).

⁶⁷ Ibid (e).

⁶⁸ Ibid (f).

⁶⁹ Ibid (g).

⁷⁰ Ibid (h).

⁷¹ Ibid 7 (a & b).

to evaluate, apply and supervise the procedures to ensure safe working conditions in the different sectors of activity, in the prevention of fires and explosions.⁷² The Ministry of Education is responsible to educate and pass on knowledge of hygiene and health at work to employers, as well as to rationalise, monitor and support the technical and methodological training in safety, hygiene and health in the workplace.⁷³

It creates within central and local government 'secondary involving bodies' which are, as government bodies, able to participate, and are allowed to intervene, in the practice of safety, hygiene and health in the workplace. The central government is responsible for the evaluation and monitoring of investigations regarding the causes of work accidents as well as work related diseases.⁷⁴ This is done with the collaboration of the Commission for the Prevention of Work Accidents and the participation of union organisations. It also has the responsibility to promote and provide training to managers, technicians and employees in the subject related to safety, hygiene and health at work.⁷⁵ Local government has a responsibility to promote the development and support initiatives of companies in manufacturing equipment for collective and individual protection, safety devices and accessories of machines; to participate in the disclosure of problems related to safety, hygiene and health at work and, also; to consider the collective work agreements as well as the implementation of safety, hygiene and health measures in the workplace.⁷⁶

Chapter III of the law regulates the role of the partners involved in OHS in the workplace. It indicates in article 9 that employers are required to take the useful and necessary measures so that the work is done in an environment and under conditions that allow the normal physical, mental and social development of employees as well as to offer protection against work accidents and occupational diseases.⁷⁷ Employers are also required by this law to ensure that every employee

⁷² Ibid 7 (c & d).

⁷³ Ibid 7 (f & g).

⁷⁴ Ibid (b).

⁷⁵ Ibid 8 (b).

⁷⁶ Ibid 8 (e, f & g).

⁷⁷ Decree No. 31/94 article 9 enacts the competence of employers in relation to health and safety at work. Additionally, employers are required to a) 'design facilities and work processes where risk factors are not present, are minimised or identified and limit their effects on man; b) integrate the management of company activities on safety, hygiene and health as a component of the production process by taking timely preventive measures which are necessary according to the existing or

receives information and sufficient and adequate instruction regarding issues of security, hygiene and health at work.⁷⁸

Article 12 deals with the competences of trade unions. The employee's representative in the workplace has the responsibility, among others, to: participate in the process of elaborating regulations, standards, rules and measures to improve security conditions as well as hygiene and health at work in their respective area.⁷⁹ They are further allowed to cooperate in the enforcement of regulations, standards and rules established for the workplace;⁸⁰ and to collaborate with employers in the training programmes;⁸¹ additionally the trade unions are required to participate in the investigation and analysis of occupational accidents and diseases; and to cooperate in investigations that take place in order to improve working conditions. They are also allowed to participate in collective employment agreements and have a responsibility to integrate, participate and collaborate in the activities of the Commission for the Prevention of Work Accidents.⁸²

Article 13 enacts the obligations of employees. These include, among others, the responsibility to look after his/her own health and safety as well as that of the other people who can be affected by workplace activities.⁸³ Simultaneously the law assigns rights to employees in respect of protective measures. According to article 14, every employee enjoys the right to: work in a safe and hygienic work environment;⁸⁴ to receive periodical instructions as well as information about relevant legislation and other general information regarding safety, hygiene and

foreseeable risks; c) comply and enforce all rules and laws regarding safety, hygiene and health at work; d) create the Commission for the Prevention of Work Accidents and security services and occupational medicine in accordance with what is established on the subject; e) elaborate the regulation specific for safety, hygiene and health at work and the prevention program for awareness purposes'.

⁷⁸ Article 10, the employer can achieve this information and training of workers requirements during a) 'the hiring; b) change of work post or technical and work process; c) use of substances whose manipulation involves risks; d) return to work after an absence superior to six months'.

⁷⁹ Article 12 (a).

⁸⁰ Ibid 12 (b).

⁸¹ Ibid 12 (d).

⁸² Ibid 12 (f, h, & k).

⁸³ article 13 (1).

⁸⁴ article 14 (a).

health at work;⁸⁵ and the right to be elected to be part of the Commission for the Prevention of Work Accidents in the company.⁸⁶

Although this study describes the above articles from Decree No. 31/94, the list of sections that describes this law continues up to article 38 and each article addresses different aspect of safety, hygiene and health at work. For example, section IV of article 15, describes other obligations, which require the State to ensure conditions that guarantee the promotion of scientific research in the safety, hygiene and health in different economic sectors.

Chapter V addresses issues that take place in the workplace. It requires that work premises must obey the technical requirements that guarantee good safety measures to those who work in it.⁸⁷ The law also allows for the medical examination for employees, as it declares that:

It is a mandatory medical examination, on the employer's expense, as laid down in this diploma [legislation] and the supplementary regulation to be established by the governing body for safety, hygiene and health at work.⁸⁸

The law enacts provisions that regulate unhealthy and dangerous work.⁸⁹ It defines unhealthy and dangerous work to be a type of work which by its very nature presents conditions of high risk, and exposes employees to health and safety hazards. The oil and gas industry by its very nature present conditions of high risk and exposure to unhealthy and unsafe conditions at work. Polycyclic Aromatic Hydrocarbons (PAHs) found in crude oil are toxic to humans when exposed to it. They burn the eyes and skin, cause irritation and damage to sensitive membranes in the nose, eyes and mouth.⁹⁰ Hydrocarbons alone generated during the refinery of crude oil can trigger pneumonia if they enter into the lungs, can damage red blood cells, suppress immune

⁸⁵ Ibid (b).

⁸⁶ Ibid (c) additionally the this article establishes right to employees to e) 'know through the Commission for the Prevention of Work Accidents or the union organization the results of the inspections carried out on safety and sanitary conditions with a view to demand its compliance; f) receive the medical regulation, admission and periodic, with the purpose of knowing its skills and their health condition for the performance of their duties; g) be reframed in new work station and receive the corresponding training, if you suffer from any deficit in the ability to work that stops him from exercising their normal duties'.

⁸⁷ Ibid article 18.

⁸⁸ Ibid article 25. According to this law, medical examination, is admissible during the employment of an employee applicant, during periodic medical examination when is required and during medical examination of dismissal.

⁸⁹ Ibid article 27.

⁹⁰ United States Environmental Protection Agency, *Polycyclic aromatic hydrocarbons (PAHs)* (2008) 2.

systems, and strain the liver, spleen and kidneys.⁹¹ Benzene present in crude oil can cause a range of critical and long-term diseases, including cancer, bone marrow failure and aplastic anaemia, among others.⁹² The response and management of these associated hazardous conditions have been poorly addressed in the labour market and have received little attention among policy makers, employers and stakeholders in Angola.⁹³ It is understood that unhealthy and dangerous work, as well as the exposure to toxic substances, is very costly, not only to the employer but also to the society as a whole. This view is supported by Hamzoui, who explains that unsafe and unhealthy workplace practices could lead companies to face costly early retirements, loss of skilled staff, high absenteeism rate, and high insurance premiums due to work related accidents and diseases.⁹⁴

All of the above is affirmed by Cottle and Guidotti who explain that the oil and gas industry is responsible for many occupational injuries.⁹⁵ The production of crude oil is associated with many chemical components that are detrimental to the health of humans, and today, the industry not only significantly contributes to the economy of the country, but it also creates threats to the health and safety of employees especially those performing jobs on offshore oilrigs.⁹⁶

These problems of unhealthy and dangerous work conditions as well as the exposure to toxic substances are preventable through the implementation of a comprehensive OHS legislation which regulates the actions of employers and employees and it is also necessary to outline a strict inspection mechanisms and reporting processes to curtail occupational incidents. Ramos, who has recently studied the Angolan oil industry, also argues that there is a need for a robust protection of employee's health and safety in the oil and gas industry in particularly

⁹¹ Ibid.

⁹² World Health Organisation, *Preventing disease through healthy environments* (2010) 1.

⁹³ Ramos ML 'Angolan oil industry operation' Open Society Initiative for Southern Africa, part 1' *Journal for the Oil Companies* (2011) 30. PAHs are some of the most persistent and toxic components in crude oil.

⁹⁴ Hamzoui EE, *Occupational health and safety management system* (OHSMS) available at http://www.eos.org.eg/NR/rdonlyres/E52EBEE0-0C89-4B86-8DDA-EF7284F09047/722/Ezz_DineOccupationalHealthandsafetyManagementsysc.pdf accessed on 30/05/2014.

⁹⁵ Cottle MKW & Guidotti TL, *Process chemicals in the oil and gas industry: Potential occupational hazards toxic to health* (1999) 41.

⁹⁶ Ibid.

due to high risks associated with the industry.⁹⁷ Although Decree No. 38/09 of 14 August 2009 is certainly an adequate milestone in the Angolan oil and gas regulatory regime, a lack of enforcement mechanisms has substantially rendered this legislation ineffectual. It is a given fact that, in the absence of a resilient legal system and legislation to stand between oil exploration activities and human life, the identified problems in the sector will continue.

Other than this example, Decree No. 31/94 establishes mechanisms for monitoring the compliance with the law in respect of issues other than OHS.⁹⁸ It authorises the General Labour Inspectorate to monitor the compliance of the law and to impose sanctions in cases of breach of the regulation. It also includes disciplinary and criminal liability in cases of breach of the regulation mandates.⁹⁹ Finally, it is understood that Decree No. 31/94, provides the legislated administrative rules, procedures and requirements of OHS. The law has a major impact on the health and safety policy in the workplace. This regulation clearly defines both incentives to encourage compliance with the regulation as well as imposing penalties for non-compliance in order to discourage actions that are undesirable. Despite all of this, as mentioned above, the mechanisms making possible the enforcement of the policies are insufficient.

2.1.3.2. The General Labour Law

The 5th amendment of the General Labour Law came into force on 11 February 2011. It applies to all employees and foreign residents who provide services paid by an employer within the organisation, and to apprentices and trainees under the authority of an employer, as well as to the non-resident foreign employees who work under the authority of an organisation and are obliged to follow its direction.¹⁰⁰

⁹⁷ Ramos ML op, cit note 93 at 30.

⁹⁸ Decree No. 31/94 article 29 (3) referring to the process of monitoring the law, it establish authority to organs of the General Labour Inspectorate are responsible to punish those responsible for not complying with the legal standards and absence of measures to eliminate dangerous working conditions.

⁹⁹ Ibid article chapter VII article (31). 'Without prejudice of other criminal attributable liability measures; employers who do not comply with the obligations provided for herein, shall be punished by fine of up to 10 times the average wage offered by the company in question, for each offense reported.'

¹⁰⁰ General Labour Law article 1

The law entitles the Minister of Labour to issue regulations and decisions as may be necessary. It consists of thirteen chapters which address the following areas:

- a) Chapter I: General principles¹⁰¹
- b) Chapter II: Constitution of juridical and labour relation of the workplace¹⁰²
- c) Chapter III: Content of the juridical and labour relations regulations¹⁰³
- d) Chapter IV: Change of the juridical and labour relations regulations¹⁰⁴
- e) Chapter V: Conditions of work provision¹⁰⁵
- f) Chapter VI: Duration and temporal organisation of the work¹⁰⁶
- g) Chapter VII: Suspension of work provision¹⁰⁷
- h) Chapter VIII: Remuneration for labour and other rights¹⁰⁸
- i) Chapter IX: Suspension of the juridical and labour relations regulations¹⁰⁹
- j) Chapter X: Extinction of the juridical and labour relations regulations¹¹⁰
- k) Chapter XI: Conditions applicable to specific groups of workers¹¹¹
- l) Chapter XII: Social and cultural promotion of workers¹¹²

¹⁰¹ Ibid chapter I it establishes the general principles and, scope of application and exclusion, the right to work among others.

¹⁰² Ibid chapter II it establishes the Constitution of the Juridical and Labour regulations and provides the necessary requirement for the contract of employment, special modalities of the employment contract as well as the a contract for apprentices and interns.

¹⁰³ Ibid chapter III establishes the content of the Juridical and Labour Relations Regulations. It describes powers, rights and duties of the parties; the work discipline as well as the regulations.

¹⁰⁴ Ibid chapter IV covers a change in the nature of the Juridical and Labour Relations Regulations. It further refers to the rules of change of employer; transfer to different functions or to a new work post; and a change in the centre or work location of the job.

¹⁰⁵ Ibid chapter V discusses conditions of work provision. It describes safety and hygiene at work, as well as occupational medicine.

¹⁰⁶ The chapter addresses issues of normal working hours; night work; overtime work; exemptions from work schedule; special schemes of work schedule; and work schedule.

¹⁰⁷ The chapter establishes rules of closure and weekly rest; holidays; vacations; leave without payment, as well as time off work.

¹⁰⁸ The chapter regulates the general principles of remuneration; settlement and payment of wages; compensation and deductions on a salary; wage protection; and other economic rights of workers.

¹⁰⁹ The chapter cover contents such as the terminations of the contract of employment with the consent of the employee and it provides the rules of terminations of the employment relations with the consent of the employer.

¹¹⁰ This chapter regulates the stability of employment; expiry of contract for objective reasons; termination of contract by agreement between the parties; individual dismissal for justified reason; disciplinary dismissal as well as individual dismissal for objective causes. Further, it talks about collective dismissal; termination of contract by worker's initiative; exoneration of the worker appointed, as well as damages and compensation.

¹¹¹ This chapter address issues about specific conditions applicable to women.

¹¹² It regulates issue of social and cultural promotion of workers.

m) Chapter XIII: Guarantee of rights arising from the juridical and labour relations regulations.¹¹³

OSH is therefore addressed in Chapter V. This particular section is important for this study, because it sets the general provision regulating occupational hygiene, safety and health in the workplace generally.

Article 85 specifies the general obligations of the employer regarding health, hygiene and safety which includes, among others, the following: 'Take useful and necessary measures needed to be adapted to the conditions of the organisation, or work centre so that it is conducted in an environment and conditions for normal physical work'.

The employer also has an obligation to take useful and necessary measures needed to ensure that work is conducted in a protected environment against accident and diseases;¹¹⁴ as well as an obligation to organise and provide adequate training in terms of health and safety standards at work to all hired employees.¹¹⁵

Every employee has a duty to reasonably use the tools and materials to carry out the work, including personal and collective protective equipment and to protect the company's assets, production from damage, destruction, loss and deviation.¹¹⁶

Article 86 gives special instructions as to the collaborative role of more than one enterprise performing their activities in the same workplace. They are required to cooperate with the view to ensure the safety, hygiene and health at work, as it indicates:

When more than one company exercises their activity in the same workplace, all employers should collaborate in the organization of work safety, hygiene and health at work, without prejudice to the liability of each employer in relation to their employees' health and safety conditions.¹¹⁷

¹¹³ This is the last chapter in the General Labour Law. It gives a special attention to the prescription of rights and expiry of right action. It includes rules of the jurisdiction of courts as well as conciliation in individual labour disputes.

¹¹⁴ General Labour Law article 85 (a) the employer has responsibility which among others include: 'Take useful and necessary measures needed to be adapted to the conditions of organization, or work centre so that it is conducted in an environment and conditions for normal physical, mental and social workers and to protect against accidents at work and diseases'.

¹¹⁵ Ibid article 85 (c). 'To organize and provide proper practical training in terms of safety and health at work of all workers hired, that change work post, or technical and work process that use new materials whose handling involves risks or return to work after an absence greater than six months.'

¹¹⁶ Ibid article 46 (f).

¹¹⁷ Ibid article 86.

Article 87 specifies the duties of who are required by this law to adequately use the safety and hygiene attires as indicated:¹¹⁸ ‘the workers are obligated to use correctly the security and hygiene devices and equipment at work, and not remove or alter them without the employer’s permission’.

Article 88 states criminal liabilities for employers in the cases of accidents or occupational diseases as a result of gross negligence, as it is confirmed: ‘[t]he employer ...[remains] criminally responsible for the accidents or occupational disease that result, for gross negligence of the employer which affects the employees, even those protected by insurance’.¹¹⁹ Article 91 defines the General Labour Inspectorate. It authorises the labour inspectors to monitor the compliance of safety and hygiene in every workplaces.¹²⁰

Although the articles encompassed in Chapter V of the General Labour Law address general provisions regarding safety at work and the protection of the health of the employees in private sector, this particular section does not supersede the rules specified in other legislation, as discussed above. Both of the established legislation and rules are jointly promulgated with a unique view of protecting employees against dangerous condition at work or any other exposure that can jeopardise the health and safety of employees. This principle is confirmed by Decree No. 31/94 5 August 1994, that says:

The purpose of this policy is to prevent occupational accidents, occupational diseases and any other attack on the physical integrity and health of workers, representing a fundamental task of the State, to guide companies in reducing the risks inherent in the work environment.¹²¹

Similarly, Decree No. 38/09 of 14 August 2009 establishes the New Safety Regulations for the Petroleum Industry. It states that it ‘sets forth the fundamental principles regulating the health and safety of the oil industry and it covers a wide range of matters relating to health, hygiene and safety at work’.¹²²

¹¹⁸ Ibid 87.

¹¹⁹ Ibid article 88.

¹²⁰ Ibid article 91. The General Labour Inspectorate has the responsibility to monitor the compliance of safety and hygiene at work as well as to assist or provide expert medical services from health officials or experts from other areas with a view to establish safety, hygiene and health conditions at the employer’s premises.

¹²¹ This principle is confirmed by the preamble of Decree No. 31/94 of 5th of August 1994.

¹²² The preamble of Decree No. 38/09.

2.2. Conclusion

The chapter has examined whether OHS regulations effectively target and alleviate problems related to health and safety of employees. It is concluded that the legislations such as Decree No. 38/09 of 14 August 2009 (which established the New Safety Regulations for the Petroleum Industry), and the General Environmental Law No. 5/98 are the statutes enforced to ensure the health and safety of employees in the oil and gas industry and for the entire labour market.

It is understood that each one of the above legislations address different aspects of health and safety. As it is, Decree No. 31/94 of 5 August 1994 establishes principles that promote the health, hygiene and safety in the workplace and it applies to every person in the labour market.¹²³

Decree No. 38/09 of 14 August 2009 is the legislation that regulates health and safety issues in the oil and gas industry. It enacts responsibilities for employers and employees towards the management of health and safety in the oil sector. The General Environmental Law No. 5/98 enacts provisions regulating the environment. This legislation provides for the right to stop work that presents a danger to the health and safety of employees as well as for the right of everyone to live in unpolluted environment.¹²⁴

Although the legislation effectively targets the alleviation of problems related to the health and safety of employees, factors such as the development of the oil and gas industry, the increased number of occupational accidents, as well as a lack of enforcement of the rules demonstrates the inconsistencies within these enactments. Decree No. 38/09, in particular, needs provisions, a revised structure, and a dedicated plan to solve the problems associated with it.

The ILO explains that minimal labour standards can be more protective of the employee by means of stronger legislation promulgated by the relevant authority or national government.¹²⁵ An uncertainty, however, remains as to what extent the legal framework of OHS in Angola and the administration of OHS laws, actually provides

¹²³ Decree No. 31/94 article 1. This article establishes the objective of the law.

¹²⁴ General Environmental Law article 3.

¹²⁵ International Labour Organisation, *Your health and safety at work: Legislation and enforcement* (2010) available on <http://actrav.ilo.org/actrav-english/telearn/osh/legis/lemain.htm> accessed on 29/05/2014.

employees with the necessary protection against unhealthy and unsafe working conditions.

CHAPTER THREE: INTERNATIONAL STANDARDS USED TO PROTECT EMPLOYEES FROM UNHEALTHY AND UNSAFE CONDITIONS

The third chapter of this dissertation explores the international standards that are used to protect employees from unhealthy and unsafe conditions. The analysis of the relevant source materials reveals a disjunction between the international standards and the legislations as implemented in Angola.

Additionally, the chapter evaluates the position of Angola in relation to the international perception that it is not complying with regulatory measures in regard to OHS. It also reveals that the right to health and safety should be assumed when national and international standards are taken into consideration.

The International Labour Organisation has always considered as a key issue employees' protection against injury and disease, as has been articulated by Takala.¹²⁶ Many of the activities of this organisation have been directed at the prevention and elimination of workplace harmful incidents internationally.¹²⁷

This chapter will consider the ILO standards regarding OHS and gives an overview of the general provisions applicable to the right of employees to occupational health and safety.

3.1. International perspective regarding occupational health and safety

Occupational health and safety precautions fall under the aegis of the International Labour Organisation. They have the specific purpose of improving the health and safety of employees internationally. The organisation was created in 1919 with the view to encourage social justice and achieve universal peace in employment relations. The ILO Constitution specifies that: 'the protection of the worker against sickness, disease and injury arising out of employment is a fundamental part of social justice'.¹²⁸

The rights to decent working conditions, health and safety and to an environment that does not harm the life of employees are considered to be so important that enterprises globally are required to observe and ensure that in all activities that take place in the workplace, their employees are protected from the

¹²⁶ Takala J, *Introductory report: Decent work — safe work* (2005) 3.

¹²⁷ Ibid.

¹²⁸ The preamble of the ILO Constitution.

exposure to conditions that jeopardise their lives. The above view was confirmed by the ILO Declaration of Philadelphia of 1944, which articulates that:

The Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: ... adequate protection for the life and health of workers in all occupations.¹²⁹

It is important to note that although this principle gives special attention to the current vision of the ILO, at the same time it powerfully confirms the need for the enforcement of OHS practices in Angola. When the theory behind the above principle is recognised on the national level, the government, employers and employees are basically assuring the world of the key role of social justice through a decent work agenda. This view is in accordance with the ILO Declaration on Social Justice for a Fair Globalization. This states that:

By adopting this text, the representatives of governments, employers' and workers' organizations from 182 member States emphasize the key role of our tripartite organization in helping to achieve progress and social justice in the context of globalization. Together, they commit to enhance the ILO's capacity to advance these goals, through the Decent Work Agenda.¹³⁰

Moreover, the complete policy based approach in respect of OHS was particularly recognised in the 1981 OSH Convention and Recommendation No. 164 of 1981. Similarly, a number of other Conventions that address policies of OHS were established, but for the purpose of this study it is necessary only to refer to the following conventions, all of which deal with issues also of relevance to Angola's petroleum and gas industry:

- I. Occupational Safety and Health Convention, 1981 (No. 155)
- II. Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- III. Occupational Health Services Convention, 1985 (No. 161)
- IV. Chemicals Convention No. 170 of 1990.

This dissertation, although cognisant of the importance of all the above-mentioned conventions, will focus particularly on Convention No. 155 and Convention No. 170.

¹²⁹ International Labour Organisation Declaration of Philadelphia of 1944 section III (g).

¹³⁰ The preface of the ILO Declaration on Social Justice for a Fair Globalization.

3.1.1. Occupational Safety and Health Convention, 1981 (No. 155)

The Occupational Safety and Health Convention, 1981 (No. 155) creates a tripartite structure, including occupational health systems and rights, as well as responsibilities. It also prescribes that health and safety law is to be applied to all branches of economic and industrial activity covered.¹³¹ It instructs that each member state shall, in consultation with the most representative organisations of employers and employees, formulate, implement and periodically review a coherent national policy on occupational health and safety in the working environment.¹³² The convention addresses the standard as to what is 'reasonably practicable'.¹³³ It identifies functions and responsibilities of all stakeholders and it recommends a review for the national policy at regular intervals.¹³⁴

The Convention establishes an adequate and appropriate system of inspection, enforcement mechanism and an adequate plan for penalties in cases of a violation of the regulation.¹³⁵ It indicates that member states must provide guidance to employers and employees and assist them to comply with their legal obligations.¹³⁶ It provides for the protection of employees from unfair consequences and their complete removal from any situation of imminent and great danger.¹³⁷

It is important to recognise the importance of this Convention discussed here. Both the Convention and its recommendation are considered by the ILO as being advanced tool that provides to the signatory state members, a guideline of a complete policy based approach of OHS legislation. The Convention specifies a structure which includes provisions for a development policy of OHS, implementation mechanisms, policy review guidelines, as well as principles that provide adequate legal obligation to employer, employee and the government towards OHS. It was confirmed in a report of the International Labour Conference that states:

The Convention and Recommendation are both innovative in that they clearly adopt a comprehensive approach based on a cyclical process of development,

¹³¹ Occupational Safety and Health Convention, 1981 (No. 155) article 1.

¹³² Ibid article 4 (1).

¹³³ Ibid 4 (a).

¹³⁴ Ibid article 6.

¹³⁵ Ibid article 9 (2).

¹³⁶ Ibid 10.

¹³⁷ Ibid 13.

implementation and review of a policy, rather than a linear one laying down precise legal obligations.¹³⁸

The disjunction between this international standard and the laws as implemented in Angola — as described in Chapter Two — is characterised by the country's not being a signatory of this Convention and its recommendation.¹³⁹ The constraint is observed and specially set out in Decree No. 31/94 of 5 August 1994, which is the legislation recognised as the main national policy for OHS. It means that this national legislation fails to include progressive provisions as those stipulated in the Convention and its recommendation. This has left the national legislation of OHS with considerable gaps, a lack of enforcement mechanisms, as well as a lack of a supervisions policy to monitor nationally the compliance of OHS in the workplace, facts which will be discussed in more details in Chapter Four.

3.1.2. Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Convention No. 187 and its recommendation are new types of International Labour Standards approved in order to raise the profile of OHS as an issue both nationally and internationally.¹⁴⁰

The purpose of this international standard is to encourage a preventive culture of health and safety and to advance the achievement of a healthy and safe working environment in which government, employers as well as employees can work together towards that achievement. This can be achieved through a system of determined rights, responsibilities and duties, one in which the principle of prevention is prioritised at the national level.¹⁴¹

The Convention requires that the ratifying countries must promote a continuous improvement of OHS standards in order to prevent occupational injuries and diseases, as well as fatalities of individuals in the workplace.¹⁴² In order to

¹³⁸ International Labour Conference Report III Part 1B, ILO standards on occupational safety and health promoting a safe and healthy working environment (2009) page 5.

¹³⁹ A review conducted at the Convention discussed indicates that the country did not ratify any of those conventions. The same information was published on the following website: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102999 accessed on 24/02/2014.

¹⁴⁰ Promotional Framework for Occupational Safety and Health Convention 2006 (No.187) article 1 (d).

¹⁴¹ Ibid.

¹⁴² Ibid article 2 which include the objectives of this convention.

achieve the prevention measure, it requires the harmonisation and unification of OHS standards to be in line with the complete national policies that regulate OHS.¹⁴³

Angola is not a signatory to this Convention and its recommendation.¹⁴⁴ This study, however, suggests that the state needs to take significant steps to ratify these international standards with the view, to adequately benefit from technical assistance of these principles of the ILO regulations. Were Angola to ratify the Promotional Framework for Occupational Safety and Health Convention, it would be able to improve the establishment of a fair culture of OHS legislation based on the recognised international principles. This could also enable the State to accelerate the process of achieving a decent work agenda as well as a progressive healthy and safe working environment in the entirety of the economic sector.

The above observation is confirmed by the objective of the Promotional Framework for Occupational Safety and Health Convention that states:

Each Member which ratifies this Convention shall take active steps towards achieving progressively a safer and healthier working environment through national programmes on occupational safety and health by taking into account the principles in relevant ILO instruments on occupational safety and health.¹⁴⁵

3.1.3. Occupational Health Services Convention, 1985 (No. 161)

This Convention provides fundamental preventive functions and responsibilities for advising employers, employees and their representatives, on matters covering:

- I. The requirements for establishing and maintaining a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work; and¹⁴⁶
- II. The adaptation of work to the abilities of employees in the light of their state of physical and mental health.¹⁴⁷

Part One of the Occupational Health Services Convention, 1985 (No. 161) specifies principles of national policy. Among other provisions, it confirms that the country members of the ILO ought to articulate, implement, as well as establish at the

¹⁴³ Ibid.

¹⁴⁴ Angola is among other states that did not ratify the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), as confirmed in the following: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312332:NO accessed on the 4/07/2014.

¹⁴⁵ Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187) article 2.

¹⁴⁶ Occupational Health Services Convention 1985 (No. 161) article 1 (a) (i).

¹⁴⁷ Ibid article 1 (a) (ii).

national level a policy on OHS, and a coherent periodic review of occupational health services.¹⁴⁸ Article 5 describes the functions and responsibilities of employers in relation to the health and safety of employees in the workplace, as it is confirmed in the Convention, which states that an employer has the responsibility to ensure the:

Identification and assessment of the risks from health hazards in the workplace; surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer; advice on planning and organisation of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work.¹⁴⁹

Part Three of the Convention establishes rules to be recognised at the organisational level. It requires that provisions ought to be made in form of laws or regulations, collective agreements, or in other methods recognised by the competent authority after consultation with employer and employees' representatives. The provisions shall be made for the establishment of an occupational health service, as confirmed by article 6:

Provision shall be made for the establishment of occupational health services: by laws or regulations; or by collective agreements or as otherwise agreed upon by the employers and workers concerned; or in any other manner approved by the competent authority after consultation with the representative organisations of employers and workers concerned.¹⁵⁰

Part Four of the Convention specifies rules which describe the conditions by which the occupational health service ought to be operated. For example, article 9 recommends that provisions that ensure a satisfactory cooperation and coordination between occupational health services as well as other bodies responsible for the provisions of health services publicly must be defined and encompassed in the national OHS policy in order to ensure a best practice of OHS in the organisational level.¹⁵¹

¹⁴⁸ Ibid Part I article 2. It confirms that 'Member States shall formulate, implement and periodically review a coherent national policy on occupational health services'.

¹⁴⁹ Ibid article 5 (a, b & c).

¹⁵⁰ Ibid article 6 (a, b & c).

¹⁵¹ Ibid article 9 (3) it confirms that '[m]easures shall be taken, in accordance with national law and practice, to ensure adequate co-operation and co-ordination between occupational health services and, as appropriate, other bodies concerned with the provision of health services'.

The importance the Occupational Health Services Convention, 1985 (No. 161) is seen in the role that it establishes for employers and employees and for their respective functions as regards the preventive measures of OHS in the workplace. Because of its failure to ratify the Convention, Angola is unable to benefit from the principles established in it, and needs to take significant steps to rectify this convention, or at least to comply with the principles laid down in the Convention, even if it does not go as far as ratifying it.

3.1.4. Chemicals Convention No. 170 of 1990

The Chemicals Convention applies to all sectors of economic activities where chemical substances are used, as indicated: 'this Convention applies to all branches of economic activity in which chemicals are used'.¹⁵² The Convention prescribes the right to information, meaning that chemical exposure must be considered and noted.¹⁵³ For example, the review shown by the ILO on safety in the use of chemicals at work, argues that it is the general responsibilities of employers towards the management of chemic substance at work, as it states that:

Employers should ensure that all chemicals used at work are labelled or marked in accordance with the provisions of this code, and that chemical safety data sheets have been provided in respect of all hazardous chemicals used at work. They should also ensure that the chemical safety data sheets provided by the supplier, or similar relevant information where such data sheets have not been provided, are made available to workers and their representatives.¹⁵⁴

The safety data sheet should contain essential information about the identity of the substance, supplier, classification, hazards, safety precautions and emergency procedures, as indicated in the convention under its article 8.¹⁵⁵

It is important to consider that the chemicals used during the production of oil and gas in particular can be detrimental and risky to the health and safety of employees, especially where there is lack of procedure to manage and regulate the use of chemical substances in the workplace. For example, oil and gas drilling and its servicing activities, involves the use and production of potentially hazardous materials that are dangerous to the health and safety of employees and it is necessary

¹⁵² Chemicals Convention (No.170) article 1 (1).

¹⁵³ Ibid article 7 (1).

¹⁵⁴ ILO, *Safety in the use of chemicals at work: An ILO code of practice* (1993) 6.

¹⁵⁵ Article 8 of this Convention establishes chemical safety data sheets and it specifies that 'data sheets containing detailed essential information regarding their identity, supplier, classification, hazards, safety precautions and emergency procedures shall be provided to employers'.

that the employers in the sector together with the national legislators continuously evaluate the type and the extent of chemical and other health hazards across the industry in order to protect employees from the exposure to conditions that can be dangerous to their employees' life.

The argument above is also confirmed by Cottle and Guidotti. They explain that the production of crude oil is associated with many chemical components that are detrimental to the health of humans, and today the industry significantly contributes to the economy of the country but it also creates treats to the health and safety of employees especially those performing jobs on offshores operations.¹⁵⁶ For example, the United States Environmental Protection Agency confirms that Polycyclic Aromatic Hydrocarbons (PAHs) found in crude oil are toxic to humans if exposed to it.¹⁵⁷ It can burn eyes and skin, cause irritation and damage sensitive membranes in the nose, eyes and mouth.

Hydrocarbons alone generated during the refinery of crude oil can, as mentioned above, trigger pneumonia if they enter into the lungs, can damage red blood cells, suppress immune systems, and strain the liver, spleen and kidneys.¹⁵⁸ Benzene present in crude oil can cause a range of critical and long-term diseases including cancer, bone marrow failure and aplastic anaemia.¹⁵⁹

Although the use of chemical substances in the workplace requires substantive attention due to the negative effect of it, the response and management of these associated hazardous conditions have been poorly addressed in the labour market and they have received little attention among policy makers, employers and stakeholders in Angola.¹⁶⁰ The industrial-related fatalities, incidents of diseases as well as the exposure to toxic substance are very costly, not only to the employer but also to the society as a whole. This view is supported by Hamzoui, who explained that unsafe and unhealthy workplace practices could lead companies to face costly early retirements, loss of skilled staff, a high absenteeism rate, and high insurance premiums due to work related incidents and diseases.¹⁶¹

¹⁵⁶ Cottle MKW & Guidotti TL, op cit note 95 at 41.

¹⁵⁷ United States Environmental Protection Agency, *Polycyclic aromatic hydrocarbons* (PAHs) (2008) 2.

¹⁵⁸ Ibid.

¹⁵⁹ World Health Organization 'preventing disease through healthy environments' (2010) 1.

¹⁶⁰ Ramos op cit note 93 at 30.

¹⁶¹ Hamzoui EE op cit note 94.

Thus, compliance with the instruments established in the Chemicals Convention No. 170 of 1990 can help to minimise the use of unhealthy and unsafe conditions derived from the exposure of toxic substance in the oil and gas industry of Angola in particular. The Convention is designed to ensure that information about chemical and toxic substances as well as the associated protective measures is disseminated to employees in the workplace in order to avoid any unfair exposure to dangerous conditions, as it is confirmed in article 9 that says:

Employers shall ensure that all chemicals used at work are labelled or marked as required by Article 7 and that chemical safety data sheets have been provided as required by Article 8 and are made available to workers and their representatives.¹⁶²

It can be noted that although Decree No. 38/09 of 14 August 2009 (which establishes the New Safety Regulations for Petroleum Industry) as well as Decree No. 31 of August 1994 (which establishes the law that governs the OHS in the workplace in general) address issues of OHS in the workplace, both set out limited rules as regards toxic substances (as will be discussed in greater detail below). There is still, however, a lack of enforcement mechanisms in respect of the rules inherent in these legislations.

3.2. Evaluation in respect of the position of Angola as against the Conventions

Angola is not a signatory to the conventions regulating OHS.¹⁶³ It is therefore not obliged to ensure its laws comply with the recommended obligations assigned to these international standards. The Constitution of Angola confirms that: ‘International Treaties and Agreements shall come into force in the Angolan legal system after they have been officially ratified and enforced’.¹⁶⁴ It is understood that this provision protects Angola in the event of any international claim that it could be obliged to meet were it to accede to the international standards as laid down in the above Convention.

It can, however, be noted that because of this failure to ratify the conventions on OHS, there are particular gaps, insufficient provisions, as well as a lack of enforcement policy in Angolan legislation relating to OHS (as discussed in Chapter

¹⁶² The Chemicals Convention No. 170 of 1990 article 9 (1).

¹⁶³ A review conducted at the Conventions discussed indicates that the country did not ratify any of those conventions. The same information was published on the following website:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102999
accessed on 24/02/2014.

¹⁶⁴ Constitution of Angola article 13 (2).

enforcement policy in Angolan legislation relating to OHS (as discussed in Chapter Two). These shortcomings have led the ILO's General Observation Team to request the ratification of principles that regulate OHS standards. The government of Angola's response, however, is that 'the situation was carefully considered by the responsible services of the Ministry of Labour which took all measures in order to rapidly meet the obligation to submit instruments [copies of the laws] to the competent authorities [ILO]'.¹⁶⁵ Despite this statement all of the obligations have not, in fact, been met as yet.

The Ministry's affirmation acknowledges that the existing legislation had not been in line with the standards applicable internationally or guaranteed to meet the obligations required — otherwise it would not have been necessary for it 'to rapidly meet the obligation to submit instruments...'. The Ministry's affirmation can, however, be found wanting, for Angolan legislation needs, in fact, to update its OHS regulations in order to afford better protection of the health and safety of employees in the workplace. In so doing, the Angolan government and its oil and gas industry would be able to exercise their obligations and other instructions as recommended in these conventions. Employees would thus see that their rights would be fairly protected. These issues will be discussed in detail in subsequent section of this Chapter. The general fundamental principles applicable in respect of the rights of employees to health and safety in the workplace are discussed below. It needs, however, to be iterated that the lacunae that exist in Angola are present not so much in the legislation but in the supervisory and enforcement mechanisms.

3.3. Securing the right of employees to occupational health and safety

The South African Industrial Health Resource Group (IHRG), a development organisation that works with employees and trade unions in the field of occupational health and safety, confirms that, the most practical way employees approach the demand for health and safety is by the recognition of their rights to this in the workplace. It states that:

¹⁶⁵ ILO, *Angola general observation* (CAS) adopted 2013, published 102nd ILC session (2013) as available on

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100_COMMENT_ID:3132860 accessed on 4/07/2014.

The most useful way for workers leaders and trade unions to approach health and safety is from the perspective of the needs of workers. The interest of workers are advanced and defended through the establishment and recognitions of rights.¹⁶⁶

This means that the interest of employees at work are advanced and protected through the establishment and recognition of their rights. These rights are amalgamated in laws and in formal agreements. Although the Constitution of Angola stipulates the right to health and safety for everyone,¹⁶⁷ the extended provision of the right to health and safety in the workplace is enshrined in Decree No. 31/94 of 5 August. This legislation sets out the broader provisions in line with the enforcement and implementation of the right to health and safety protection in the workplace, as it states that:

The Safety and Health at Work system aims to implement their [the employees] right to safety and health protection in the workplace in order to organize and develop their activities in accordance with the methods and standards established by legislation for employers and workers, as well as the competent organs of the state involved in this matter, comply with the duties established in this decree.¹⁶⁸

It is expected that this legislation will offer more than minimum safety rules with the view to preventing the risks of accident and the occupational diseases as well as to safeguard the right to health and safety of employees in the workplace. The accidents, as well as the fatalities taking place in the oil and gas industry, in particular, have, however, been caused by the failure to ensure the implementation of safety rules, as specified in Chapter One. This indicates a lack of policy mechanism to enforce the compliance of the provisions established in the legislation, a failure to ensure the rights to health and safety, as well as a lack of supervisory mechanisms.

The right to health and safety in the workplace consists of a number of principles, including:

- a) The right to know,
- b) The right to work in a safe and hygienic work environment,
- c) The right to just and favourable working conditions and
- d) Health and safety as a human right

¹⁶⁶ Industrial Health and Resource Group, *Organizing for health and safety: A guide for trade union, section 3: worker's health and safety rights* 2nd Ed (2011) 1.

¹⁶⁷ The Constitution of Angola article 39 (1).

¹⁶⁸ Decree No. 31/94, Health and Safety Conditions at Work System article 4 (1).

All these rights mentioned above are discussed in more details below. Decree No. 31/94 of 5 August establishes the right of employees to know what mechanisms should be in place.

3.3.1. The right to know

It is recognised in Decree No. 31/94 of 5 August that employees have the right to know the information related to the legislation and other common rules of safety, hygiene and health at work, as it says: 'employees have the right to receive initial and periodic instructions as well as information about relevant legislation and other general information on safety, hygiene and health at work'.¹⁶⁹

According to the *Encyclopaedia of Occupational Health and Safety*, the right to know refers commonly to the laws, rules and regulations which have to be communicated to employees in the workplace in order to ensure they understand the potential hazards in their jobs as well as the information to prevent the exposure to the dangerous conditions.¹⁷⁰

The above argument, as well as the provisions established in article 14 of Decree No. 31/94, suggests that employees have the right to know the rules and regulations regarding OHS in the workplace and the right to know the potential hazards associated with their jobs. For example, employers in the oil and gas sector can impart this knowledge through training programmes or during the introduction of new technologies or equipment or through the direct inclusion of the provisions of the rights in the employment contracts.

3.3.2. The right to work in a safe and hygienic work environment

Decree No. 31/94 guarantees the right to every employee to work in a safe and hygienic work environment, by declaring that 'the workers, regarding safety, hygiene and health at work, enjoy the right to labouring in a safe and hygienic work environment'.¹⁷¹ This means that in the event in which the workplace is affected with unhealthy and unsafe conditions, employees have the right to refuse to work under the conditions that threaten their health and safety and, further, that industrial action does not lead to a possible dismissal.

¹⁶⁹ Ibid article 14 (c).

¹⁷⁰ Stellman JM, *Encyclopaedia of occupational health and safety: The body, health care, management and policy, tools and approaches* (1998) 2329.

¹⁷¹ Decree No. 31/94 article 14 (c).

The facts in *Ministry of Environment and Fishery v Chevron*, (commonly known in Angola as Acórdão No. 036/2002 Labour Court, as it was reported by *BBC News*), for example, indicate that crude oil spills caused by a poor maintenance of pipes used to transport crude oil from the platform to the reservoir tanks, forced 'employees to stop working due to unhealthy and unsafe condition at work'.¹⁷² In response, the employer attempted to dismiss those employees who refused to resume their work.¹⁷³ After the examination of the case, the court held 'that employees have a legitimate right to refuse work which appears to be dangerous to their health and safety'.¹⁷⁴

In circumstances of this nature, an employee's dismissal attempts could constitute an unfair labour practice, because Decree No. 31/94 guarantees the right of everyone to work in healthy and safe conditions, as cited above. It means, however, that employees should have a legitimate right to refuse work that threatens their health and safety at work. It is reasonable to infer that employees had a *bona fide* fear for their safety and the employer had not taken reasonable measures to dispel those fears. This view was confirmed in the Supreme Court of the United States between *National Labour Relations Board v. Washington Aluminium*, 'a walk off by employees for unsafe working conditions should be afforded fully for protective measures'.¹⁷⁵ Although these rules do not constitute a legal precedent in the Angolan civil code, they, however, establish a consistent rule for the right to refuse and stop working when conditions are perceived to be unhealthy and unsafe for employees in the working environment.

Academic writings, such as those of Mischke and Garbers, also explain that in certain hazardous conditions an employee may refuse to work if the employer fails to provide safe working conditions.¹⁷⁶ This refusal will not constitute a breach of the employment contract.¹⁷⁷

Importantly Angola is a signatory to other several international conventions, such as the UN's Universal Declaration of Human Rights and the International Covenant on

¹⁷² *Acórdão No. 036/2002 LC Ministry of Environment and Fishery v Chevron*. This case was also reported by *BBC News*: July 1, 2011 'Business: Angola fines Chevron for pollution'. Available at <http://news.bbc.co.uk/2/hi/business/2077836.stm> retrieved 20/05/2014.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid* para 8.

¹⁷⁵ *National Labour Relations Board v. Washington Aluminium* U.S. 9 (1962).

¹⁷⁶ Mischke C & Garbers C, *Safety at work: A guide to occupational health, safety and accident compensation legislation* (1994) 3.

¹⁷⁷ *Ibid.*

Economic Social and Cultural Rights. It thus has an obligation to ensure that it has laws which comply with international standards in the workplace, despite not having ratified the OHS conventions. So far, such an alignment of the practice of Angola with international standards in the workplace, especially in the oil industry, is lacking.

3.3.3. The right to just and favourable working conditions

The right to just and favourable conditions at work encompasses a fundamental tenet of international law.¹⁷⁸ This illustrates that ‘no work is immune from the dangers of occupational hazards’.¹⁷⁹ The Universal Declaration of Human Rights declares that ‘everyone has the right to life, liberty and security of person’, while article 3 (1) instructs that employees have right to ‘just and favourable working conditions’. Thus, supplementary evidence clarifies that the right to just and favourable conditions encompasses health and safety at work.

It is necessary to turn to literature on account of an absence of case law which could illustrate the interpretation of these provisions. Here it is clear that the right to just and favourable conditions regarding health and safety at work is an international labour right. It, further, combines the widest scope of application, which means that this right (to just and favourable working conditions), applies to all persons regardless of their place of origin or geographical location, nationality, race, gender, language, religion, political view or personal possessions (*ratione loci* and *ratione personae*) respectively.¹⁸⁰ It does not exactly exclude employees that work on offshore oilrigs, or fieldworkers, employees in traditional offices, or in any other workplace setting.

It is implicit that the right to just and favourable working conditions was regulated in order to ensure the highest standards of physical as well as mental health of employee at work.¹⁸¹ This model of international right is instituted to improve all aspects of environmental and industrial hygiene; the treatment and control of

¹⁷⁸ Levy FI ‘Occupational health as a human right’ (2011) *ILO LJ* available at <http://www.ilo.org/oshenc/part-iii/resources-institutional-structural-and-legal/item/216-occupational-health-as-a-human-right> accessed on 11/07/2014.

¹⁷⁹ Ibid.

¹⁸⁰ Brems E, *Human rights: Universality and diversity* (2001) 4.

¹⁸¹ International Labour Organisation ‘Health and life at work: A basic human right’ (2009) *ILJ Geneva* 5.

epidemic occupational diseases, and the protection of employees against risks resulting from factors which adverse the health and safety in the workplace.¹⁸²

3.3.4. Health and safety as a human right

According to Magdalena the International Covenant on Economic, Social and Cultural Rights recognises, *inter alia*, the right to the inherent dignity of the human person.¹⁸³ The full ideal is to promote a model of free human beings who enjoy freedom from fear and it can only be achievable if effective conditions are created whereby everyone enjoys his/her economic, social, cultural, civil and political rights.¹⁸⁴

Importantly, the right to just and favourable working conditions, in relation to health and safety at work as well as the right to the inherent dignity of the human person, requires employers in conditions of a workplace accident to fully respect the individuals' human rights and ensure that the workplace offers conditions that is not harmful to the health and safety of those who work in it. Although these rights protect employees against unhealthy and unsafe working condition, the onus is on the court to enforce and monitor the compliance of these rights which are inherent in the Universal Declaration of Human Rights.

3.4. Conclusion

In conclusion, this chapter has explored the international standards used to protect employees from unhealthy and unsafe conditions in the workplace and these protective rules are disseminated in the conventions regulating OHS. The analysis of the relevant source materials reveals a disjunction between the international standards and the legislations as implemented in Angola. This incoherence is on account of the country's not ratifying the conventions governing OHS.

It is concluded that the State has a responsibility to protect the individual rights, whether in the workplace or in any other occupational environment.¹⁸⁵ It is stated in the Constitution that the law shall promote, regulate and protect 'the Angolan people and the interests of workers'.¹⁸⁶ Although Decree No. 31/94 is

¹⁸² Ibid.

¹⁸³ Magdalena-Sepúlveda M, *The nature of the obligations under the international covenant on economic, social and cultural rights* (2003) 2.

¹⁸⁴ Ibid.

¹⁸⁵ The Constitution of Angola article 39 (2).

¹⁸⁶ Ibid article 38 (3).

expected to offer more than minimum protection to the right of employees in the workplace, failings in this legislation as against international standards has left critical gaps as well as a lack of enforcement mechanisms in the legislation governing OHS in Angola.

CHAPTER FOUR: EXPLORATION OF THE CURRENT STATE OF THE ANGOLA'S LEGISLATION RELEVANT TO OHS

As the discussion in the first two chapters demonstrates, Decree No. 31/1994 is the general OHS law in Angola. It has, however, partially failed to meet an expectation, this being that it should offer sustainable protection for the health and safety of employees in the workplace in general. One must ask what the underlining problems behind the fragmentation and inconsistency of the general OHS legislation of Angola? The objective of this chapter is to identify gaps in Angolan legislation that might need to be supplemented.

Although this chapter will focus specifically on Decree No. 31/94, the law that covers OHS issues in general, it needs to be noted in passing that Decree 38 of 2009 covers aspects of OHS specifically in the oil and gas industry. Mention must also be made in a little detail of the General Labour Law of 2011 as there are in it some provisions about labour inspectors that match corresponding provisions in the 1994 Decree. Some provisions of Decree 31/94 were, furthermore, repealed by the four labour laws discussed in Chapter Two, that is, the General Labour Law of 2011, Executive Decree No. 6/1996, Executive Decree No. 21/1998, and Decree No. 128/1998. Further, because of the extensive scope of its application, as discussed earlier, 'this decree applies to workers, state companies, mixed private and cooperative' enterprises'.¹⁸⁷ In the first instance it will look at the regulatory failures under the current arrangements of the legislation and the enforcement mechanisms. It will also discuss the gaps in the Angolan legislation that might need to be supplemented as well as the implementation challenges. The conclusion will summarise what has been discussed and propose a way forward.

4.1. Regulatory failures under current arrangements

The national framework described in the previous chapter suggests that the model of OHS legislation of Angola is expected to offer more than minimum protection to employees' health and safety at work. The reality, however, is somewhat different as the occurrence of occupational incidents, fatalities, diseases and the risk associated with unhealthy and unsafe working conditions, points to the existence of deficiencies

¹⁸⁷ Decree No. 31 of 1994 article 2.

in the national legislation as it fails to protect employees against hazardous and unsafe working conditions.

In order to make recommendations for the modernisation and improvement of Decree No. 31/94, the study uses the ILO's Convention No 155 of 1981 as a useful benchmark, and a reference for national legislators and policy makers to use as a comparison and in an advisory capacity in order to reduce the inconsistencies and fragmentation of the national legislation governing OHS.

Article 4 (1) of the ILO Convention, describes the need for a coherent national policy of OHS.¹⁸⁸ Decree No. 31/94, as discussed in Chapter Two, is the recognised national policy for OHS in Angola. The main objective of this legislation is to prevent actions that adversely affect the health and safety of employees in the workplace as well as to instruct companies to decrease the hazards intrinsic in the workplace, as it states:

The purpose of this policy is to prevent occupational accidents, occupational diseases and any other attack on the physical integrity and health of workers, representing a fundamental task of the State, to guide companies in reducing the risks inherent in the work environment.¹⁸⁹

Although the legislation sets out this objective, private stakeholders in industries in general made recommendations through the National Private Investment Agency (an economic development organisation commonly known in Angola as ANIP). These recommendations include the need for a harmonisation of the OHS framework. Some refer to a need for cooperation within various sectors and the establishment of a forum to exchange information among institutions that deal with OHS laws and related issues. Their aim (recommendations) is to improve service delivery and to enable employees to easily direct their claims and complaints in respect of OHS to the relevant authorities in the hope of a just and fair outcome.¹⁹⁰ In practical terms, the extent and nature of the recommendations put forward by ANIP is an indication that there could be the need for review of the general national policy. This should allow for the effective participation of third parties, as partners of government, who

¹⁸⁸ Convention No 155 of 1981 Part ii Principles of National Policy article 4 (1 & 2).

¹⁸⁹ The preamble of Decree No. 31 of 1994.

¹⁹⁰ The National Private Investment Agency (ANIP) is a government institution which was created in 2003. It is the government entity responsible for the implementation of private investment policy, as well as the promotion, co-ordination, guidance and supervision of private investments, see Jover E, Pinto AL & Marchant A, *Angola private sector country profile* (2012) 20.

could offer advice as to the best practices of OHS for the whole of the economic sector.

Article 4 (2) of the ILO Convention describes the aim of any coherent national policy, and it enacts reasonably practicable recommendations for the implementation of OHS.¹⁹¹ In respect of the provision addressing what is 'reasonably practicable' a gap can be identified in the Angolan legislation, as Decree No. 31/94 does not address the question of what would be 'reasonably practicable' in the Angolan industrial environment, and does not offer any recommendations which could be considered 'reasonably practicable'. A work such as *Planning Occupational Health and Safety* clarifies that 'reasonably practicable' is a term used in most OHS laws in order to qualify the duties owed by persons in the control of business responsibility.¹⁹² It, moreover, states that:

Duty holders will be expected to be aware of the available state of knowledge about how injury could occur, how likely this is can affect employees, and what can be done to prevent its occurrence.¹⁹³

The inclusion of reasonably practicable provisions in Decree No. 31/94 of 5 August 1994 would have been logical and important for they would have strengthened the current standards that burden employers with the primary duty of care, that is, to be familiar with the hazards and risks in the workplace. Employers would have been able also to use relevant information on potential ways to eliminate unhealthy and unsafe conditions in the workplace.

Article 5 (c) of the Convention defines the principle of training in accordance with this law.¹⁹⁴ This provision is well regulated in Angola's OHS framework. For example, article 11 of Decree No. 31/94 focuses its attention on the requirement in respect of training and development of health, hygiene and safety in the workplace. It declares 'that employers must ensure that every worker receives information and instruction sufficient and adequate on matter of security, hygiene and health at

¹⁹¹ Convention No 155 of 1981 Article 4 (2). 'The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment'.

¹⁹² Gabrielle G & Gaby G, *Planning occupational health and safety* 8th Ed. (2009) 39. '*Planning occupational health & safety* is a convenient handbook for OHS practitioners, line managers, students and anyone who needs an overview of the legal and managerial aspects of managing OHS risks in organisations' [publisher's blurb].

¹⁹³ Ibid.

¹⁹⁴ Convention No 155 of 1981 Article 5 (c).

work'. Furthermore, this decree requires employers to provide training in respect of health, hygiene and safety to employees. It also promotes employees' participation in the programmes that lead to an improvement in the standards of OHS in the workplace.¹⁹⁵

Article 7 of the Convention describes the need to review policy at appropriate intervals.¹⁹⁶ The structure of Decree No. 31/94, as described in Chapter Two, reveals that the legislation does not have a section that mandates a periodical review of the legislation at appropriate intervals. Its absence, however, is a critical gap in the national policy of OHS law.¹⁹⁷ Such review of the legislation at an appropriate interval could allow it to take cognisance of any hazardous conditions identified previously by the industries. These conditions could include public safety hazards that are related to their activities, processes, products or services. The industries have the ability to rapidly assess the risks involved and to implement appropriate control measures, all of which could be revealed to the legislature, thereby enabling it to take advantage of the practical experience of the industry. It is the opinion of this study that if legislators were able to embrace the ideal of inserting a provision in Decree No. 31/94 of 5 August 1994 that allows for such a policy review at appropriate intervals, the risks of workplace accidents such as is seen in the oil and gas sector, could be eliminated if the same fatalities tended to occur in the future or otherwise controlled and monitored in accordance with any legal requirements.

Article 9 (1 & 2) of the Convention describes the enforcement of the law and regulations through an adequate system of inspection, including penalties for violations.¹⁹⁸ Decree No. 31/94 of 5 August 1994 authorises the Ministry of Public Administration, Employment and Social Security to monitor all aspects of safety, hygiene and health at work, as well as to enforce the compliance and enforcement of this legislation. In order to enforce compliance with this legislation, article 28 of this Decree establishes the office of the General Labour Inspectorate responsible for penalising organisations that appear not to comply with the legal standards as well as

¹⁹⁵ Decree No. 31 of 1994 of 5 August article 11(3).

¹⁹⁶ Convention No 155 of 1981 article 7.

¹⁹⁷ This remark is made after scrutinising clauses in each of the legal instruments regulating OHS in Angola. No clauses that describe rules to conduct a periodic review of the law were found.

¹⁹⁸ Convention No 155 of 1981 article 9 (1 & 2).

the organisational failure to omit standards that lead to the elimination of dangerous working conditions, as it declares:

The organs of the General Labour Inspectorate are responsible for punishing those responsible for not complying with the legal standards and absence of measures to eliminate dangerous working conditions.¹⁹⁹

The designated labour inspector, usually from the Department of Labour, has also the duty to instruct employers to take reasonable steps within a specific period of time in order to remedy situations which are perceived to threaten the health and safety of the workforce and to take significant steps to enforce compliance with the regulations.²⁰⁰

In this respect article 88 of the General Labour Law also has a role to play. It imposes criminal liability as a mechanism to enforce compliance with regulations pertaining to the health and safety of employees. It simultaneously imposes criminal sanctions for a breach of the standards for health and safety of employees in the workplace, as it states that:

[T]he employer [is held to be] criminally responsible for the accidents or occupational diseases that result for gross negligence on his part [which] affect the workers, even protected by insurance.²⁰¹

The General Labour Law establishes the General Labour Inspectorate to generally monitor the fulfilment of the law which regulates OHS in the workplace. The General Labour Inspectors are responsible for monitoring compliance with the rules established for OHS in order to ensure the acceptable practice of OHS regulations in the workplace. They also assist the employers to provide medical service from health officials, in order to ensure an outstanding health, hygiene and safety protection in the workplace, for its article 91 states:

The monitoring of compliance with legal regulations on safety and hygiene at work is the General Labour Inspectorate's responsibility, which can assist or provide expert medical services from health officials or experts from other areas with a view to the establishment of safety, hygiene and health conditions of greater complexity.²⁰²

In the same way, the General Labour Law assigns comprehensive judicial authority to the inspectorate to, among other things, inspect any workplace, and investigate

¹⁹⁹ Decree No. 31/94 of 5 August 1994 article 28 (3).

²⁰⁰ Ibid.

²⁰¹ General Labour Law of 11 February 2000 article 88.

²⁰² General Labour Law article 91.

possible hazardous conditions as well as work stoppage due to an unsafe working environment. It also instructs employers about compliance with the laws and regulations and initiates prosecutions.²⁰³

It is now appropriate to discuss as a benchmark the ILO Convention No. 155. Its article 19 (b) defines the duties of workers' representatives, one such duty being to 'co-operate with the employer in the field of occupational safety and health'.²⁰⁴ A critical gap can be seen, in Angola in regard to this article, as no corresponding clause that addresses the matter of employee's representatives in regard to OHS in the workplace is found in Decree No. 31/94.²⁰⁵ It has been shown, above, that the current Decree No. 31/94 of Angola, when compared with the ILO Convention No 155 of 1981, is found wanting. It is evident from the comparison that the rules of the legislation governing OHS in Angola is not fully consistent with the standards as provided in the Convention, with exception of some articles.

An example of such a lack can be found in article 2, read together with article 15 (1) of the Convention. Here it is clear that this regulation establishes three important bodies in respect of the practice of health and safety in the workplace, namely an advisory council, employees' representatives, and employers' representative, all of whom discuss issues relating to OHS in the workplace, as stated in the Convention:

A Member ratifying this Convention may, after consultation at the earliest possible stage with the representative organisations of employers and workers concerned, exclude from its application, in part or in whole, limited categories of workers in respect of which there are particular difficulties.²⁰⁶

With a view to ensuring the coherence of the policy, ... each Member shall, after consultation at the earliest possible stage with the most representative organisations of employers and workers, and with other bodies as appropriate, make arrangements appropriate to national conditions and practice to ensure the necessary co-ordination between various authorities and bodies called upon to give effect to Parts II and III of this Convention.²⁰⁷

It is a fact that the tripartite body, composed of an advisory council for health and safety in the workplace, and employees' and employers' organisational

²⁰³ Article 91 of the General Labour Law, it assigns duty to a General Labour Inspectorate from the Department of Labour.

²⁰⁴ Convention No 155 of 1981 Article 19 (b).

²⁰⁵ The examinations conducted in the OHS framework of Angola finds not evidences that address employee's representative neither the description of their co-operation.

²⁰⁶ Convention No 155 of 1981 article 2 (2).

²⁰⁷ Ibid article 15 (1).

representatives, is the mechanism established to enforce employees' participation in the practice of OHS at work and a viable way to enforce the compliance with the law.

Such structures required to be set up in terms of the Convention are not found in Decree No. 31/94. A publication of the Industrial Health and Resource Group mentions that these tripartite structures carry out a wide range of responsibilities as such of the role to encourage employees to be involved in their employer's health and safety programmes.²⁰⁸ Additionally, when the responsibilities are acknowledged and supported by a strong employee's organisation, they allow employees to play a significant role in overseeing and shaping their employer's health and safety programmes required for the workplace.²⁰⁹ The absence of this tripartite structure, as well as a health and safety enforcement policy, limits the participation and engagement of employees in the OHS programmes required at the workplace. The role of this tripartite structure could ensure the employer's enforcement of and compliance with OHS at work.

4.2. Gaps in the Angolan legislation that might need to be supplemented

The results obtained from the above comparison can be arranged respectively in findings under two headings, namely lack of OHS policy as well as deficiency of enforcement mechanism.

4.2.1. Lack of occupational health and safety policy

Decree No. 31/94 is the main legislative policy for OHS, enacted in order to monitor OHS for the entirety of the economic sector. It is understood that this legislation is a written statement which states rules and obligations that bind a company's commitment to ensure the protection of the health and safety of employees and the public, as mentioned earlier, in the Preamble of the Decree. In the light of this legislation all companies should be required to establish internal health and safety policies in line with the provisions enacted by this legislation. The structure of the legislation does not, however, provide for this. Additionally, the legislation itself highlights a number of weaknesses in its framework. For example, it does not contain rules regarding the formulation, implementation and periodic review of a coherent

²⁰⁸ Industrial Health and Resource Group op cit note 166 at 2.

²⁰⁹ Ibid.

national policy on OHS which takes into consideration the representative organisations of employers and employees.²¹⁰

Other mechanisms also missing in the OHS include guidelines for a national programme on occupational health and safety which could address the objectives to be attained in a certain timeframe, as well as priorities and plan of action to be articulated to improve the practice of OHS and procedures to examine progress achieved.²¹¹

4.2.2. Deficiency of enforcement mechanism

Although Decree No. 31/94 and its accompanying legislation, the General Labour Law, as well as the Decree for Work Accidents and Occupational Diseases (No. 53 of 2005), establish some enforcement mechanisms in a general sense, their established provisions have, however, not inspired full compliance. Although not mentioned earlier, or covered comprehensively in this dissertation, it is worth noting that Decree No. 53 of 2005 has been promulgated to monitor the penalties for violation of the established OHS standards. In reality, however, it is like the rest of Angola's OHS legislation, lacks an effective national enforcement mechanism which would ensure compliance. The above comparative approach has demonstrated that there is not yet a complete modern structure of labour inspection enforcement policy in place, as confirmed by Angola's National Director of the Workplace Safety and Health Centre, who has explained that poor knowledge of the laws and regulations are one of the problems, another being a reluctance to enforce compliance.²¹² This does not mean that the provisions are not suitable for the industries. The State could, however, adopt a comprehensive and logical structure to enforce the domestic legislation based on three phases: first, abiding to the national legislation, secondly, by enforcing the rules of the national legislation and, thirdly, to report on the implementation measure of the industrial enterprises.

The national legislation, which in this case is Decree No. 31/94, might include provisions that establish content for policy formulation, which is currently

²¹⁰ This requirement is in connection with article 4 of the ILO Convention No. 155.

²¹¹ Ibid.

²¹² *Angop* (newspaper) [Interview with] Isabel Cardoso available at http://www.portalangop.co.ao/angola/en_us/noticias/sociedade/2013/7/35/Managers-employees-unaware-Workplace-Security-Centre,701bfdec-7cd0-4084-b57b-49644668e0e1.html accessed on the 4/05/2014.

absent in the legislation governing OHS in Angola. The enforcement of the rules established in the legislation has to be appropriate for the purpose of achieving obligations, and the legislation must strongly ensure provisions that impose heavy sanctions against employers whose actions lead to breach of the rules established in the legislation. As it stands, the enforcement mechanism of Angolan OHS law relies merely on restricted article 28 of Decree No. 31/94, which sets the rules for compliance of the law, as well as articles 88 and 91 of the General Labour Law which establish the role of the general labour inspector to monitor the compliance with the law and article 91 that imposes criminal liabilities in case of the breach of the OHS laws.

The study, however, understands that these restricted enforcement mechanisms available in the national legislations governing OHS do not generally inspire compliance with the laws. A single enforcement mechanism should be established with fundamental rules that will influence the capacity and willingness of individuals and organisations to obey the law, as indicated by Bryce and Heinmiller:

A fundamental component influencing the capacity and willingness of individuals and organizations to obey with the law is the capability of regulatory programs to enact policy which can promote, monitor and enforce compliance of the law.²¹³

Additionally, the academic writing of Sherriff and Tooma explain factually that the enforcement mechanism of OHS law is very important to the outcomes produced by the regulatory system.²¹⁴ It is imperative that this value system be considered in order to inspire compliance and penalise offenders.

The judicial system is also an important mechanism to enforce compliance with the law. It conducts examinations of facts, constructs and interprets arguments based on the law and determines whether an offence has, in fact, been committed, as well as the level of penalty to be imposed.²¹⁵ Evidence suggests that this extensive scope of influence has been extended in recent years, as the courts of Angola, for example, have monitored the responsibilities and liabilities of industries to comply with the regulations governing OHS. This was observed in the sanction the court

²¹³ Bryce GK & Heinmiller GR 'Analysis and comparison of the OHS enforcement provisions of the workers' compensation act' (1997) *LLJ* 5, 4.

²¹⁴ Sherriff BN & Tooma M 'Understanding the model work health and safety act' (2010) *LJ* 12.

²¹⁵ Johnstone R, *Occupational health and safety, courts and crime: The legal construction of occupational health and safety in victoria* (2003) 2.

imposed on Chevron for failing to ensure health and safety during the spill of crude oil which negatively impacted the health and safety of employees.²¹⁶

It is also believed that the regulated groups operating in Angola's labour market, including in the oil and gas industry, expect that the authorities such as courts or labour inspectors will not penalise those who obey the law, but they are likely to take action against those who violate legislation. If such sanctions are not imposed an increase in non-compliance across the board will inevitably occur.

4.3. Implementation challenge

The implementation of OHS law has been lacking due to the lack of political will which, among other factors, damages the effectiveness of OHS policy implementation. It is evident in Angola that the institutions assigned to implement the labour laws, including OHS, have limited capacity to perform the duties imposed to them by the industrial relation regulations, as confirmed by Fenwick, Kalula and Landu who comment that 'labour law institutions in southern Africa have a limited capacity to perform the functions assigned to them through the industrial relations system'.²¹⁷ Although the courts have recently made improvements in the system of legal reform, they still play a very limited role in ensuring justice around issues of labour law.²¹⁸

According to Lethbridge who has studied vulnerabilities in the OHS regulations in developing countries, the agreements regarding OHS policies could be settled in consultation with and the participation of trade unions at the national and sectorial levels.²¹⁹

The weakness of the role of the trade unions originally resulted from considerable interferences of the national government either by law or informal means, which negatively affects the implementation of OHS law in Angola. This impacts on the willingness of employees to take risks in rising OHS issues in the workplace, as quoted by the International Trade Union Confederation that declares

²¹⁶ That is in line with *Acordão No. 036/2002* op cit note 172.

²¹⁷ Fenwick C, Kalula E & Landu I, op cit note 16 at 224.

²¹⁸ Ibid.

²¹⁹ Lethbridge J, *Occupational health regulations and health workers: Protection or vulnerability?* (2008)10.

that 'workers organisations remain under close government surveillance and there are still deficits for collective bargaining in the public sector of Angola'.²²⁰

4.4. Conclusion

In conclusion, this chapter has demonstrated the underlying problems behind the fragmentation and inconsistency of Angola's general OHS legislation. Evidence shows that the national framework governing OHS provides only a minimum protection to employees' health and safety. Furthermore, severe gaps, such as the lack of an occupational health and safety policy and a deficiency in the enforcement mechanism identified in Decree No. 31/94 in comparison with the standards provided in the Convention No 155 of 1981, create weaknesses in the national legislation which impairs the effectiveness of the law to offer health and safety protection to employees in the workplace.

It is seemed to be recognised that the law will offer some coherent protection to employees when the statutory instruments that are in place oblige employers to exercise a duty of care and to provide, as far as is reasonably practicable, a working environment that is healthy and safe for everyone. A lack of political will and the weakness of trade unions are key factors that affect the implementation of the law. Finally, it is clear that the harmonisation of the legal framework regulating OHS will go a long way towards addressing the weaknesses of the fragmentary system currently in place.

²²⁰ International Trade Union Confederation, *2012 Annual survey of violations of trade union rights — Angola* available at <http://www.refworld.org/docid/4fd8896828.html>, accessed on 04/08/2014.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

The study was set out to critically explore the Angolan occupational health and safety (OHS) law and the protection it offers to employees of the oil and gas industry in particular. It has been shown that the Angolan OHS legislation still bears the character of the colonial legal system.²²¹ This creates a crisis of legitimacy and justice.

Decree No. 31/94 is the governing mechanism which regulates OHS generally. This legislation is supported by Decree No. 38/09 of 14 August 2009 which set in place the new safety regulations for the petroleum industry. In addition, the General Labour Law establishes generic provisions which regulate industrial relations for the entirety of the economic sector. All of these are the current instruments which are supposed to offer a minimum protection to employees in the workplace. None of the existing mechanisms provided for in the legislation has, however, been sufficiently enforced. This is an indication that there is a lack of political will on the part of the legislature and the executive, and an equal absence of the duty of care on the part of the industry's stakeholders. This means that employees are not fully guaranteed a safe and healthy working environment, as is demonstrated by an increase in the number of accidents,²²² which, as observed earlier, have resulted in fatalities, particularly in the oil and gas sector.²²³ The industry is also beset by OHS challenges that, *inter alia*, include the monitoring of chemical and toxic substances. These challenges far exceed those confronting other industries in the whole of the economic sector.

This study believes that sustainable OHS legislation can play an important role in meeting those challenges. Even though legislation is not entirely the answer to solve the problems within the industry, robust legislation not only provides minimum legal standards, it also encourages employers and employees to be in line with the acceptable standards required by society in general, and also helps them to go

²²¹ Fenwick C, Kalula E & Landu I, op cit note 16 at 224.

²²² Work and Health in Southern Africa (WAHSA) op cit note 10. The report produced by the Work and Health in Southern Africa (WAHSA) cites the number of fatalities that occurred in Angola's economic sector. It further explains that it is the lack of OHS enforcement measures causes most the accidents to take place, op cit note 10. See also the information regarding the number of accidents and fatalities that took place in the Angolan oil and gas sector as reported by the Ministry of Petroleum, op cit note 12.

²²³ This was also pointed out in Helena Prata, op cit note 32 on the study the oil and gas industry, who further mentions that OHS regulations in the industry is lacking.

beyond the mere management of incidents and fatalities likely to take place in the workplace. This has also been confirmed by Gunningham, who states that:

OHS legislation has sought to protect employees, not just by indicating and enforcing OHS standards, but similarly to empower employees or employee's representatives to intervene in the OHS interest of the workplace.²²⁴

It is understood from this quote that a weakness in legislation can not only constrain responsible enterprises from taking the initiative to improve OHS rules established for the workplace, but also encourage less responsible organisations to breach any existing rules.

This study demonstrates that, as far as health and safety law in Angola is concerned, not only is its practice fragmented and inadequate, but also the culture of health and safety is weak. There is also a lack of adequate enforcement mechanisms as well as a deteriorating inspection mechanism. This is not to say that there are no mechanisms in place at all, but those that are, are inadequate. Although legislation is in place to effectively target the alleviation of problems related to the health and safety of employees, the legislation itself — especially Decree No. 31/94 and Decree No. 38/09 that establish the new safety regulations for the petroleum industry — is characterised by some inconsistencies. Decree No. 31/94, as the main legislation governing OHS and covering the widest scope of application, also governs the entirety of the labour market. It is required to have — but lacks — a dedicated plan and provisions to solve the current problems existing in the oil and gas sector, as well as in all industries operating within the Angolan economy.

This present study also shows that employees' protection against injury and disease has always been a key issue for the International Labour Organisation. In order to address these concerns, the organisation has established rules and regulations in the form of conventions and recommendations, their purpose being to promote and achieve its agenda of improving working conditions internationally. Angola is regrettably not a signatory to those conventions, as indicated in Chapter Two. It therefore has no obligation to abide by and observe the international regulations. An analysis of the relevant ILO conventions and the Angolan legal instruments reveals a disjuncture between the international standards and the

²²⁴ Gunningham N, *Mine safety: Law regulation policy* (2007) 37.

legislation as implemented in Angola. This inadequacy is a direct result of the country's failure to ratify the conventions governing OHS, as explained earlier.

The failure to ratify the conventions, especially Convention 155, has left the current OHS laws with considerable gaps. Critical issues are still to be addressed and a crisis situation remains, resulting in the absence of an occupational health and safety policy as well as a deficiency in enforcement mechanisms. Other substantial gaps observed are poor surveillance systems, inadequate preventive measures and poor management of occupational disease. This is due to the poor provision of occupational health services in the country and, seemingly, the lack of the adequate training and development of occupational health and safety professionals. It has been shown that when the international regulations as well as national laws are actively enforced and made applicable, employees feel legally protected against unsafe conditions at work.

Currently Angolan law is enforced through the mechanisms integrated in the legislation regulating OHS as well as through the exceptional role of the courts, which are authorised to monitor the compliance of the laws as well as sanctioning organisations or employees who breach the rules established to promote justice for OHS, as indicated in Chapter Four. These mechanisms are, however, shown to be deficient. What currently exists is a comprehensively lack a satisfactory connection with the country's enforcement policies.²²⁵ The way the enforcement mechanisms are arranged in the legislation, as observed, indicates that they do not specify or include key elements of a compliance policy. In consequence, the application of the enforcement articles will not ensure consistency in inspection across different industries as well as across the whole of the labour market.

The need to ensure consultation and active partnerships among interested governmental institutions such as ANIP, as was exemplified in Chapter Three, is important and should be encouraged, as many bodies have the relevant expertise and practical experience needed to contribute to the effective practice of OHS.²²⁶ It is also concluded that, although good progress has been made in the expansion of the legislative regime, the actual implementation of such legislation remains challenging. Unfortunately the lack of political will, corruption, and the poor involvement of trade

²²⁵ The dissertation describes what is current (September 2014) in the law. The law may, of course, be amended in the future.

²²⁶ The National Private Investment Agency (ANIP), *op cit* note 190.

union or employee's representatives, has created impediments to the satisfactory implementation of the laws.²²⁷ The lack of participation of trade unions from different industrial sectors, employer's representatives, as well as employees' representatives in the process of drafting the legislation, has created deficiencies in the alignment of the legislation with most of the realities of the industries as well as meeting the expectations of OHS, as may be required by employers as well as employees.

This study, however, proposes an extensive shift away from the current legal debate to a focus on the relevant issues that will offer substantive protection to the health and safety of employees, as well as justice in law reform, as is quoted below:

Safe work creates no obstacles to being competitive and successful. In fact, no country — and no company in the long run — have been able to jump to a high level of productivity without making sure that the work environment is safe.²²⁸

It is thus recommended that at this relatively early stage in the development of legal protective measures for OHS as well as ensuring justice in law reform, bodies of the national government responsible for drafting laws and observing international treaties in order to improve the actual OHS policy, have to take significant steps to ratify the conventions, especially those discussed in Chapter Three. Similarly, the ratification of Convention 155 could help the national government as well as employers to avoid the temptation of lowering labour standards in the belief that this could give them a greater proportional advantage in international trade, as confirmed by Baccini and Koenig-Archibugi.²²⁹

Due to the extent of irregularities found in the Angola's labour market, as well as a lack of the requisite purpose to achieve a proactive protection for employee's health and safety in particular, it is necessary to develop a new, clear, considerable, comprehensive, coherent and consistent national labour inspectorate for the enforcement of policy. Regulations need to be enacted to protect whistle-blowers who provide information about infractions committed by their employers. Such regulations could ensure the compliance and enforcement of the law to an acceptable extent.

²²⁷ Lethbridge J, op cit note 219.

²²⁸ *Global Employment Agenda: Discussion paper* (ILO, Geneva) March 2002.

²²⁹ Baccini L & Koenig-Archibugi M, *Why do States Commit to International Labour Standards? The Importance of "Rivalry" and "Friendship"* (2010) 2.

An integrated national OHS system is required to minimise the adverse impact of occupational accidents and diseases, and promote a culture of prevention in the oil and gas industry in particular. This approach is consistent with international practice, international labour standards and the Government's constitutional obligations.

Finally, it is without argument that it is in society's interest to bring about a change in illegal corporate actions, which will at the same time promote a culture that adheres to the provisions of legality and believes in a supervisory mechanism that is able to monitor compliance with legal obligations.

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